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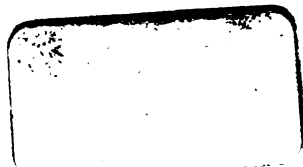
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CORRESPONDENCE

CONCERNING

CLAIMS AGAINST GREAT BRITAIN,

TRANSMITTED TO THE

SENATE OF THE UNITED STATES

IN ANSWER TO THE

RESOLUTIONS OF DECEMBER 4 AND 10, 1867, AND OF MAY 27, 1868

VOLUME V.

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PAPERS

RELATING TO

CLAIMS AGAINST GREAT BRITAIN.

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		1865.		
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	Lieut. Comman- der Waddell to Governor Dar- ling.	Jan. 25	Announces the arrival of the Shenandoah at Port Phillip, and requests permission to make repairs and receive supply of coal. Desires to be allowed to land prisoners.	598
	Mr. Francis to Lieut. Com- mander Wad- dell.	Jan. 26	Permission given to repair and coal, but de- sires to be informed of the nature of the repairs needed. Requests a list of the prisoners and any other information affect- ing them that can be given.	599
	Lieut. Comman- der Waddell to Mr. Francis.	Jan. 28	States that he will report the nature of the repairs needed as soon as he shall have received the information from the parties whom he has engaged to make the repairs.	599
	Messrs. Lang- lands to Lieut. Commander Waddell.	Jan. 30	Repairs will not be accomplished within ten days.	600
	Mr. Francis to Lieut. Com- mander Wad- dell.	Jan. 30	Desires to be informed of the supplies needed for the immediate use of the Shenandoah, and states that a board has been appointed to examine and report on the nature of the repairs needed.	600
	Do.....	Jan. 31	Permission given to purchase a reasonable quantity of supplies. Again request a list of the prisoners on board the Shenandoah.	600

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No.	From whom and to whom.	Date.	Subject.	Page.
		1865.		
	Lieut. Commander Waddell to Mr. Francis.	Feb. 1	Gives list and particulars of the prisoners on board the Shenandoah. Complains of the delay in making repairs.	601
	Mr. Francis to Lieut. Commander Waddell.	Feb. 1	States that from the report of the board appointed to examine the Shenandoah, it is evident that the ship should be placed on the patent slip for further examination and repairs, and hopes that the necessary arrangements will be promptly made.	601
	Lieut. Commander Waddell to Mr. Francis.	Feb. 1	Acknowledges the receipt of the above and transmits a second list of the prisoners.	602
	Mr. Francis to Lieut. Commander Waddell.	Feb. 7	Requests that a day be named for the departure of the Shenandoah, and states that the use of appliances, the property of the government, cannot be granted, nor any assistance rendered by it, directly or indirectly, toward effecting the repairs.	602
	Lieut. Commander Waddell to Mr. Francis.	Feb. 7	States that he cannot name a day for her departure until the extent of her repairs can be ascertained.	602
	Mr. Francis to Lieut. Commander Waddell.	Feb. 14	Again desires to know when the Shenandoah will be in a condition to proceed to sea.	602
	Lieut. Commander Waddell to Mr. Francis.	Feb. 14	States that the ship will be ready for launching on the 15th, and she will probably proceed to sea on the 19th instant.	602
	Mr. Francis to Lieut. Commander Waddell.	Feb. 14	Complaining that the execution of a warrant for the arrest of a British subject who had enlisted on board the Shenandoah in violation of the Queen's proclamation of neutrality had been prevented, and stating that until such warrant can be executed, the permission granted to the Shenandoah to repair and take supplies will be suspended.	603
	Lieut. Commander Waddell to Mr. Francis.	Feb. 14	Denying that the execution of the warrant was interfered with, or that any one had enlisted since the arrival of the Shenandoah into port. Protesting against any obstruction which would cause the detention of his ship in port.	603
	Mr. Standish to Mr. Beaver.	Feb. 14	Directing that the lessee of the patent slip desists from rendering any aid, assistance to, or perform any work in respect to the Shenandoah, and to prevent, at all risks, the launch of the ship.	604
	Lieut. Commander Waddell to Mr. Francis.	Feb. 15	Stating the ship has been seized to prevent her being launched, and requesting to be informed if such proceeding has the approval of the governor.	604
	Mr. Francis to Lieut. Commander Waddell.	Feb. 15	As the safety of the vessel may be endangered by her present position on the slip, permission is given to launch the ship.	604
	Do.....	Feb. 15	States that orders were not issued to seize the vessel, but that the police were instructed not to permit any of her Majesty's subjects to render any aid or assistance to, or perform any work in respect of the Shenandoah during the suspension of the permis-	604

PARLIAMENTARY AND JUDICIAL APPENDIX No. XXII—Continued.

No.	From whom and to whom.	Date.	Subject.	Page.
		1865.	sion which was granted to repair and take in supplies, until an answer should have been made to Mr. Francis's letter of the 14th. Also states that four men who were concealed on board the Shenandoah, left the ship, and were arrested; among whom was the person named in the warrant. As the man is now under arrest, the order suspending permission to British subjects to aid in effecting repairs and taking in supplies is revoked. It is expected that the vessel will make her departure on the day named.	
	Lieutenant Commander Waddell to Mr. Francis.	Feb. 16	States that every dispatch is being made to get the Shenandoah to sea at the earliest possible moment; and in regard to the four men alluded to, they formed no part of the ship's complement; upon their discovery by the ship's police they were immediately sent ashore.	605
	Lieutenant Commander Waddell to the Attorney General.	Feb. 14	Requesting to be informed if the Crown claims the sea three miles from the Port Phillip Headlights, or from a straight line drawn from Port Lonsdale and Cape Schank.	606
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CLAIMS AGAINST GREAT BRITAIN.

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PARLIAMENTARY AND JUDICIAL APPENDIX.

PARLIAMENTARY AND JUDICIAL APPENDIX
TO
CLAIMS AGAINST GREAT BRITAIN.

APPENDIX No. XV.

OFFICIAL REPORTS OF THE ALEXANDRA TRIAL BEFORE
A JURY, AND ON APPEAL TO THE COURT
OF EXCHEQUER AND THE
HOUSE OF LORDS.

IN THE HOUSE OF LORDS.

The ATTORNEY GENERAL, appellant, and SILLEM AND OTHERS, claiming the vessel *Alexandra*, seized under the foreign enlistment act, (59 George III, chapter 69,) respondents.

Report of the trial before the right honorable the Lord Chief Baron and a special jury. With an appendix.

Counsel for the Crown: The Attorney General, Sir Wm. Atherton, knight; the Solicitor General, Sir Roundell Palmer, knight; the Queen's Advocate, Sir Rob. Josh. Phillimore, knight, Q. C., D. C. L.; Mr. Locke, Q. C.; Mr. T. Jones.

Counsel for the claimants: Sir Hugh Cairns, knight, Q. C.; Mr. Karslake, Q. C.; Mr. Mellish, Q. C.; Mr. Kemplay.

Solicitor for the Crown: Mr. F. J. Hamel, solicitor for her Majesty's customs.

Solicitors for the claimants: Mr. E. L. Rowcliffe, (Gregory Rowcliffe & Co.,) London. Agents for Messrs. Fletcher & Hull, Liverpool.

FIRST DAY, MONDAY, June 22, 1863.

Eight special jurymen only having answered, a *tales* was prayed.

The information was opened by Mr. T. Jones.

The ATTORNEY GENERAL: May it please your lordship; gentlemen of the jury, I shall have to ask, and I am sure I shall obtain, your careful attention to the observations with which I shall have to introduce this case to your notice. The case is so far a singular case, that although the act of Parliament upon which it is founded passed so long ago as the year 1819, and although it is true that various proceedings have been commenced from time to time, similar to the present, under that act, I am not aware that until to-day any case of the kind has been actually brought to trial; and therefore it is a case of a class with which neither you nor other gentlemen who are in the habit of serving on juries have any very great familiarity.

Gentlemen, you will find that this information is a proceeding on the part of the attorney general claiming the forfeiture of a vessel called the *Alexandra*.

The act under which the information is brought is familiarly known as "The foreign enlistment act," the title of which is "An act to prevent the enlisting or engagement of his Majesty's subjects to serve in foreign service, and the fitting out or equipping in his Majesty's dominions vessels for warlike purposes, without his Majesty's license;" * and under this act, upon information received by the government in

* *Vide* British foreign enlistment act. (59 Geo. 3, c. 69.) post.

the month of April last, seizure was made of the vessel whose name I have mentioned to you, the *Alexandra*; a seizure on grounds which, if established, will make out the forfeiture of the vessel. Now the seizure having been made, certain gentlemen at Liverpool, for I should state that the seizure was made in Liverpool, certain gentlemen there, five in number, whose names will be given to you, who carry on the business of iron founders, under the name of Fawcett, Preston & Company, made an affidavit that at the time of seizure the vessel in question was their property, and thereupon, according to the prescribed rules, they were permitted to enter an appearance to defend, as they do to-day, thereby putting upon the Crown, as between the Crown and themselves, the burden of proving a sufficient cause under the act of Parliament which would justify the seizure and affirm the forfeiture. That act was passed at a time when hostilities were actually in operation between Spain, the mother country, and her revolted colonies in South America. And that act, I may mention, repealed two previous statutes, one the 9th of George II, and another, the 29th of the same reign, which acts, however, had a narrower scope than the act in question, as they related only to the enlisting of soldiers to serve in the armies of other powers. They had this difference also, that under each of those acts the offense that the act created or affirmed was made a felony, and the punishment was death. The consequence of the severe punishment was, or was supposed to be, that in truth no conviction could possibly be obtained under the acts, and therefore by the foreign enlistment act, not only were the provisions of the former acts extended so as to apply to the case you will now have to consider, that of equipping and furnishing ships to be employed in the service of foreign governments against other states at peace with the English Crown, but the offense was reduced to the minor class of misdemeanor, and the punishment, instead of being capital, was that attaching to offenses of a less grave character, namely, the forfeiture of the ship, and in some instances fine and imprisonment.

I should mention (and perhaps I am the more justified in doing so, inasmuch as the present proceeding has originated out of the hostilities which unfortunately now, and for some time past, have been carried on between the government of the United States and certain States formerly willing members of the Union, I mean the States that are now called the Confederate States) that previous to the passing of the foreign enlistment act in this country, the government of the United States of that day had applied themselves to the consideration and the devising of a legislative provision on the same subject. For in 1794, by an act of Congress, and in 1818 again, by another act of Congress,* revising and re-enacting and extending the former, provisions were made similar to those contained in the foreign enlistment act of this country. Therefore, in passing our act of 1819 we may be said to have followed the example set by the United States, and especially as under the act of Congress provision was made making it a misdemeanor to be concerned in fitting out vessels, much in the terms of the English foreign enlistment act, and the law of America is the same to this day. With respect to the object of the passing of the foreign enlistment act, the two earlier acts do not appear to have had in view the same object. It appears particularly to have been contemplated by the framers of the foreign enlistment act to enforce the observance of neutrality in the event of war between states with each of whom this country might happen to be in friendly relations. Such being the object of the foreign enlistment act, the earlier acts seem not to have contemplated that at all, or at all events, if at all, very indirectly; and they seem rather to have had in view the direct defense of the Crown, at that time not very well assured to the line in which it then was, and in which, happily, it has since continued—rather an object of self-defense than with a view to the preservation and the enforcement of the duties of neutrality.

Now I am sure I need not say a word about the importance of observing neutrality on the part of a state being at war with neither one belligerent nor the other. You are aware that the sovereign of any state cannot directly, by his own forces, interfere in a pending war without himself thereby becoming a party to the contest, the ally of the one and the enemy of the other. But, with reference to the subjects of neutral states, their interference in violation of the duties of neutrality by lending aid to the one of the belligerent parties or to the other, I say such interference does not of itself or necessarily involve the sovereign whose subjects they are in the pending war. At the same time such acts are calculated of course to give great umbrage to the belligerent state against whom or against whose arms they are directed; they are calculated to bring on complaints, possibly recrimination, and their tendency in fact, if not checked, is to involve the neutral sovereign without any will or disposition of his own, or his government, in the war in which his subjects under those circumstances improperly seek to take a part. It is therefore not only the duty of the neutral government or governments to provide, as far as may be, against this mischievous intermeddling of their own subjects in the quarrels of those states; not only is it their duty to do so, but for the reasons I have mentioned it is manifestly and highly their interest to take that course. And, therefore, the policy of the act, and one may advert to that for a moment, the policy of the foreign enlistment act cannot admit of any doubt,

* *Vide* United States foreign enlistment act, (act of Congress, c. 88,) *post* Google

more especially when we regard it in its possible bearing on the government of the United States, which, as I have before mentioned, has not only recorded upon its own statute book enactments similar to this, which would tell forcibly on this country in the event of their being a belligerent, and the United States being a neutral, and having regard also to the circumstance that I have previously mentioned, that really, with reference to this enactment, we did but follow the example that had been set us by the government of the United States. And that brings me to what much more concerns the case, namely, the hostilities out of which the necessity for such an interference on the part of the Crown as the present has arisen.

Gentlemen, you will remember, in the year 1861, certain States, now familiarly known as the Confederate States or the Southern States, which had previously for a long time, without any attempt, or, at least, any forcible attempt, to sunder the Union, formed part of the aggregate States called the United States, determined to recede, or to secede, as it has been called, from the other portions of the States which are familiarly called the Northern States, although we are bound to recognize them as the United States of America, not having recognized the independence of the seceding States; and, therefore, our relations are with the government precisely as they would have been had the secession never occurred. However, in that year the States to which I have referred determined to secede from the Union; their endeavors to carry that out and to assert their right to secede ended, as you are well aware, in a war between the government of the United States and the Southern or Confederate States, as, for convenience, we may call them during this inquiry. The war broke out which is now raging, and which has raged for considerably more than two years, which, as you are aware, has involved both parties to the war in very great sufferings and very great misfortune, which one does not at present see the end of, and which unfortunately has extended its baneful influence much beyond the confines of the territories either of the Northern or Southern States, and, as you are well aware, has involved a considerable portion of the laboring population of this country in destitution, and dependence upon others for their support. The war, however, having broken out, it soon became apparent that, although it was on the part of the seceded States what might be called a revolt against the government under which they had previously lived, and to which they had previously submitted, yet the organization and the power, and the means of self-defense, and the carrying on of military operations according to the regular and recognized rules of war—obviously all these conditions—attached to the seceded States, and therefore, as regarded other States not embarked in the hostilities, it was right, although a recognition of the Confederate States as an independent power was quite out of the question, yet it was right that they should be admitted by other nations within the circle of lawful belligerents, that is to say, that their forces should not be treated as pirates, or their flag as a piratical flag. Therefore, so far as the two belligerents were concerned, on the part of this government and the other European governments, they were so far put upon a level as that each was to be considered as entitled to the rights of a belligerent—these States just as much as the others were. That conclusion being taken, it then became proper, according to a course usually adopted and most convenient in the case of war raging between other states, that a proclamation, called a proclamation of neutrality, should be issued by the Crown, with a view, in the first place, of declaring and making public the intention of the Crown to observe an honest neutrality, and in the next place, for the purpose of warning the subjects of the Crown in the various parts of the Queen's dominions, or elsewhere, of their duty to observe the neutrality which their sovereign had taken upon herself to observe, and of preventing their falling by inadvertence or by ignorance of the law into the responsibilities and liabilities which, possibly, if they were better informed, they might seek to avoid. Therefore, on the 13th May, in the year 1861, the proclamation* to which I have alluded was issued. That proclamation begins by stating, "We are happily at peace with all sovereigns, powers, and states, and whereas hostilities have unhappily commenced between the governments, &c.," and then a proclamation is issued, which commands all the Queen's subjects to observe a strict neutrality. It then calls attention to certain provisions, the most material provisions, I think, of the foreign enlistment act, and conveys a warning to the Queen's subjects not to violate the understood provisions of international law, and apprises them that, in the event of their breaking either the municipal law, which is that which the foreign enlistment act declares, or the law of nations independent of the municipal law, they will be left to the consequences, of course penal consequences, in the courts of this country for the violation of the municipal law, and to the penalties attached by international law to the infraction of international obligations as distinct from municipal. I should mention, as we are now brought to the consideration of the character of the two belligerents—one a regular government recognized long since by the Crown of this country, and still in amity with the government of Great Britain, the other wholly unrecognized—that one of the objects, and, I think, the main object, of the foreign enlistment act being passed, was to prevent any doubt being entertained on the subject of the character of one of the

* Vide Queen's proclamation of neutrality, May 13, 1861, post.

belligerents being that, not of a recognized government, but a government *de facto* only—I say one of the objects of the foreign enlistment act was to make it clear that taking service or aiding or equipping ships for a *de facto* government, was to have the same effect and to induce the same punishment and the same result as though the government sought to be served in military or naval operations were an established and acknowledged government. The consequence is that the status of the Confederate States as belligerents having been conceded, it followed that all the provisions of the foreign enlistment act applied equally to the endeavor, contrary to the provisions of the act, to render assistance to the Confederate States, just as though it had been to render assistance to those to whom they were opposed—I mean the government of the United States.

And that brings me to the month of May, 1861. Gentlemen, I mentioned to you some time ago that the seizure upon which the present inquiry has arisen took place at Liverpool. Now Liverpool was, during the time of peace and before the outbreak of this unhappy dissension and war, the commercial resort of all traders from all parts of the Union; the ships of the North and the ships of the South equally and in common betook themselves to a very great extent to the harbor and the docks at Liverpool. It was natural, therefore, that on the outbreak of the war, either of the belligerents who might be in want of those munitions without which, in effect, it is impossible to carry on an offensive or defensive war, should endeavor to avail themselves of their old acquaintances and their former connections with the port of Liverpool, and obtain that which for the purposes of war they might require; and particularly that the Confederate States, being without a navy, and without a proper force of their own to keep the sea, should endeavor to make up and repair that defect. I say it is not unnatural that such should be the case. If the attempt to remedy that defect were to be made anywhere, it would, of course, be made in the port of Liverpool. And during the last year and the present we have heard from time to time—it is a matter of common intelligence and information, and, I might almost say, of history—we have heard that attempts have been made from time to time to obtain the assistance of ships, particularly for the Confederate States, from the quarter to which I have called attention. And although we are not here to try in any way the case of the well-known cruiser the Alabama, yet it is a matter of common knowledge that that vessel was procured from Liverpool, that she left that port without any armament, that she subsequently obtained an armament on the sea, and that she then became what she now is, avowedly under the flag of the Confederate States, a vessel of war of those States, and has vindicated her right certainly to that character by no very measured or sparing interference with the commerce and the ships, and with the citizens of the United States. At Liverpool the government of the United States of course had its agent. It was a matter of very great importance to that government, that if it were possible within the bounds and according to the requirements of English law, any assistance of the kind I have mentioned from Liverpool or from other of the English ports for the aid of the confederates should be prevented. I say it was very much the interest of the government of the United States that such should be the case, and their agents at Liverpool very naturally were on the alert to inquire and observe, and, if possible, to ascertain what might be going on, with a view to any assistance of the kind to which I have referred. Certain information was obtained by the agents of the government of the United States, that information from time to time was communicated to the executive in this country, and at last, in the month of April, 1863, information being supplied which appeared to those who advise the Crown to warrant the interference which took place, the Alexandra was seized as a forfeited vessel, and of necessity has remained from that time to the present in the custody of the officers by whom the seizure was made.

Now, gentlemen, the vessel at the time of the seizure was in a dock at Liverpool called the Toxteth dock. The vessel had been launched in the month of March, the month before the seizure, from the building yard of Messrs. Miller and Sons, by whom the ship appears to have been built, launched from their yard into the river, and, I believe, almost immediately taken up the river to Toxteth dock, and placed there for completion. At the time of the seizure, the workmen who had been engaged at work upon the vessel in Messrs. Miller's yard were still engaged upon her, and therefore, except that the change had been made from the building yard to the Toxteth dock, I suppose for convenience, having regard to the forwardness of the vessel, the state of things continued the same as before the vessel had left the stocks.

The vessel, as I am informed, is a vessel of no very great size, I think, being about two hundred and forty tons builder's measurement, and her registered tonnage would be about eighty-four tons; she is very strongly built of teak wood; her beams, in strength and distance apart, and the hatches in strength and distance apart, are greater than those used in merchant vessels; the length and breadth of her hatches is less than the length and breadth of hatches used in merchant vessels; her bulwarks are strong and low, her upper decks are of pitch pine, and there are other peculiarities and characteristics in the vessel and in its construction and composition, which will be spoken of

in detail by competent witnesses, and which I think will lead you to adopt the conclusion which they will express—that, having regard to the vessel itself and its materials, they come to the conclusion that the vessel is not fitted for the merchant service, but that it is a vessel fitted for warlike purposes.

Now, gentlemen, the state of completion of the vessel is this, and if you will allow me I will hand to you the photographs to show the vessel now. (Some photographs were then handed to the jury.)

I think you will find that the vessel, as a hull, is complete. The masts are in, and were in at the time of the seizure, because the vessel has very properly remained from that time to the present in the state in which she was found at the time of the seizure. The hull is complete, the masts are in, the rigging appears to have been, I think, from that photograph, commenced, and the boiler—for it was a screw steamer, a screw propeller, the screw was in—and the boiler was in, but I think the fittings of the boiler were not complete. At all events, gentlemen, the vessel had proceeded so far that there seemed to be, and I believe there was, no difficulty whatever in determining that the destination of the vessel, in whatever quarter of the world it was intended she should be employed, was a warlike destination.

Now, gentlemen, that brings me to the next step in these proceedings. The seizure having been made, it then became the duty of the attorney general to file an information, that is to say, to make a certain statement in proper form of the grounds upon which the seizure had taken place, and upon which the legality and justice of the seizure was intended to be rested, and which were to be relied on to warrant the forfeiture which is sought in the present proceedings. That information is based on the section to which I will direct my lord's attention rather than yours—the 7th section of the foreign enlistment act.

The LORD CHIEF BARON. I have read it just now.

The ATTORNEY GENERAL. The information, as my lord knows, by this time, is a very voluminous document. In truth neither you, gentlemen, nor any one else, unless my learned friends on the other side think proper to embark in the affair, no one need trouble themselves about the lengthy information, or the multitude of counts contained in the document.* The number of counts, as my lord will understand, is rendered necessary, or prudent at all events, by the very numerous words of description of the violation of the statute which occur in the section on which it is rested. You will find that a person shall forfeit his ship, who, without license of the sovereign, shall "equip, furnish, fit out or arm, or attempt or endeavor to equip, furnish, fit out or arm, or procure to be equipped, furnished, fitted out or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with a certain intent;" therefore, as a matter of prudence, (and I will pass from this part of the case in a moment,) it became right, with us, to put what I may call the complaint or accusation in various forms, so as to bring the case, supposing the facts proved to your satisfaction, clearly within the language and terms of one part of this section or another. Therefore, we shall have no complaint about the length of the information. The truth is, as my lord will observe, the first eight counts are those only to which any attention need to be paid. They merely vary one from the other, and the others are changes rung upon those by reason of the various expressions I have read.

Now, that information being filed, the complainants, who have been permitted, as I told you, to appear, deny the existence of those various causes upon which the Crown relies as having induced the forfeiture; and your duty to-day is to try whether, in substance and in fact, these causes, or any of them, any material causes within the section to which I have referred, did exist at the time of the seizure, and warranted the seizure that took place. Gentlemen, the charge, as you may infer from the reference I have just made to the language of the 7th section, is in fact this: that the *Alexandra* was fitted out, or, if the term be preferred, equipped, or was permitted to be equipped, or that persons endeavored to equip—they are the various forms, but I rather prefer to rest on the main expression that it was fitted out and equipped, or that endeavors were made to equip, with intent to be employed to harass and to be hostile to the government and citizens of a state with which her Majesty was not at war, the state of the United States; and the service in which the vessel was intended to be employed being in the service of the confederate or southern States. I do not bind myself to precise accuracy of phrase in thus stating the charge, my object being rather to convey it to your minds in language a little more popular than the technical language of the act of Parliament.

Gentlemen, this being the charge, let us now come to the facts on which it is proposed on the part of the Crown to rest and justify the charge. Gentlemen, at the outset, as you will find, there are various persons intimately mixed up with the seizure and forfeiture, besides those who have put in their claim—I mean Messrs. Fawcett, Preston and Company; and I think it will be convenient at the outset that I should introduce you to those various persons, and give you some description of who and

* *Vide Abstract of Information, post.*

what they are. The first persons whose names I must mention, and who are mentioned on the face of the information, are Messrs. Miller and Sons. Those gentlemen were the builders of the ship, and remained, so far as could be observed or ascertained, down to the moment of the seizure, in the actual dominion and apparent ownership of the vessel, although Messrs. Fawcett, Preston and Company have made an affidavit, which is now assumed to be true, that at the moment of the seizure the ownership of the vessel rested in them. The next persons whom I must describe to you are the claimants, Messrs. Fawcett, Preston and Company. Gentlemen, it is a little inconvenient that hardly one of those firms have the names of the persons of the firm; and you will find this of some importance, because, when we come to give evidence with respect to the various persons, the individuals must be spoken of by their names, and their surnames would not indicate, generally speaking, that they were connected with the firms under which they trade. But Messrs. Miller and Sons are free from that remark, because the elder Mr. Miller having two sons, the business is carried on under the style of Miller and Sons; therefore I presume the two sons are in partnership with the father. When we come to Messrs. Fawcett, Preston and Company, you will find a wide divergence between the style of the firm and the names of the gentlemen who compose it, whose names we have on the proceeding, because Messrs. Fawcett, Preston and Company, coming in to claim, state the true names of the members of the firm, who are Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, and William Thompson Mann. Those gentlemen are, as I mentioned to you some time ago, iron founders, and they were the persons who supplied the engines and guns and other materials of a description that were required for the completion of this vessel. We now come to a person who has been very active in this matter, and whose interference and acts were perfectly well known and acquiesced in by those who had the power of actually determining the destination of the vessel. I allude to a gentleman of the name of Bulloch, Captain Bulloch, whose position will be described to you in evidence. He is a person more or less resident in Liverpool; he is a captain in the naval service of the Confederate States, and I think the evidence will leave no doubt on your minds that he is, at all events for such purposes as those with reference to which his conduct will be spoken of in this case, the agent of the government of the Confederate States. The same remark will apply to another gentleman, of the name of Tessier, Captain Tessier it is, and he is in the service in some capacity of the firm of Fraser, Trenholm and Company, who are merchants at Liverpool, very much engaged in the interest and for the purposes of the confederate government. Now, Captain Tessier, at all events, I think you will be of opinion, is equally with Captain Bulloch an agent within the limit I have mentioned of the confederate government. You will find from the acts, the interference, and acknowledgments which these gentlemen have received, that such is undoubtedly their character. I now come to the firm of Fraser, Trenholm and Company. They are merchants at Liverpool, and you will find they are mixed up particularly with the pecuniary arrangements and the discharge of the pecuniary obligations of the Confederate States in that port; they are mixed up with Captain Bulloch, and they are mixed up with Captain Tessier, and their conduct will leave no doubt on your minds, I think, that they, equally with the others I have mentioned, were acting by the authority and on the behalf of the confederate government. There is then a Mr. Hamilton, also, whose name is mentioned, a naval officer in the service of the Confederate States, standing very much on the footing of Captain Bulloch.

Now I have introduced these various persons at this stage of the case, in order that you may follow me when I proceed to the next step, to show you that they interfered with and supervised the construction of the *Alexandra*. My proving that they are in connection with the government of the Confederate States, of course, would be of no value whatever, but I have mentioned their names and their relations with the confederate government, because you will find that all those persons have interfered in the building of the vessel, and you will find that Captain Bulloch particularly, and Captain Tessier directly interfered, and you will find their interference not only not refused, but accepted and adopted, and their suggestions acted on in the construction and the progress of the ship.

Now, gentlemen, the fair interference, as I shall submit to you, if all those facts be made out, is, that the confederate government had an interest, and an immediate interest, in the completion of this vessel. If they had it could be but one, if the vessel were constructed as a vessel of war, namely, that it should be completed, and when completed become a vessel of war, and that it should be made available for the purposes for which other vessels have under similar circumstances been made available for the confederate government, who, as we know, was without a regularly constituted navy. However, I shall put the question of intention really beyond a doubt when I adduce in evidence before you a distinct statement on the subject, made not only by the elder Mr. Miller, but the younger Mr. Miller, while the vessel was in their hands, in the course of construction by them, to the effect that undoubtedly, and they would make no concealment of it, the vessel was intended for the confederate service, and to sail under the confederate flag.

I now come, gentlemen, to state shortly the witnesses who will be called before you, (and that I will do very briefly,) and the substance of the evidence which will be adduced. We shall begin by proof which probably will admit of little or no question. I mean the evidence of workmen and others who were engaged in the ship-building yard of Messrs. Miller and Sons and in the foundry of Fawcett and Company, during the progress there of the *Alexandra*, and you will see when I mention the substance of their evidence, how important it was that I should give you some description of the various persons whose names have been mentioned as the names of individuals who from time to time, without any kind of hindrance or obstruction, resorted to the yard and took part in giving directions for the construction of the vessel and in taking counsel with those who were more immediately concerned. Now I shall call before you a person by the name of Acton, who was a watchmen in Messrs. Miller and Sons' yard, and who will speak to you of the frequent inspection of this vessel while building by Mr. Hamilton, whose name I have mentioned to you, and by Captain Bulloch, a very prominent person in those proceedings, and also by Mr. Mann, a member of the firm of Fawcett, Preston and Company. With reference to the character of the vessel you will find the evidence of a person by the name of Barnes, who had been engaged in the yard by those very gentlemen, Messrs. Miller and Company, in the building of two gunboats which were built for the British government, and which were handed over to them—two gunboats, one named the *Penguin* and the other the *Steady*. He will give you his general observations which led him to the conclusion that this vessel is a gunboat and was so intended, and, as far as that is of importance, will state the resemblance to the two gunboats I have mentioned. You will also have evidence as to Captain Tessier, equally and under like circumstances inspecting the progress of the *Alexandra*; you will have the fact that the machinery for the *Alexandra* was constructed in the foundry of Messrs. Fawcett, Preston and Company, and that one large gun and two small rifle swivel guns were also constructed in the foundry for the purpose of being placed in and forming part of the armament of the *Alexandra*. You will also have cases of interference spoken of with reference to the proceedings at the foundry of Messrs. Fawcett, Preston and Company, by Mr. Hamilton, and by other persons whose names will be mentioned.

That, gentlemen, will be the substance of the evidence in respect to the construction of the vessel, and with respect to the visit and inspection of various persons during the progress. But then, to put the character of the vessel still more out of doubt, I shall call before you Captain Inglesfield, the captain of the Queen's ship *Majestic*, stationed at Liverpool. I shall call before you Mr. Green, a very eminent and experienced ship-builder; a man of the name of Black, a very old experienced ship's carpenter; and the testimony of those gentlemen will place the matter beyond doubt that the destination of this vessel was a warlike and not a mercantile destination.

Then, in order to establish the character and connection of Fraser, Trenholm and Company, I propose to show you by the actual conduct of those gentlemen and by the business transacted at their office by Captain Bulloch and others, that they also are agents of the confederate government. Now, that will be, I think, satisfactorily proved to you on the evidence of a person named Yonge, who was formerly a paymaster in the confederate navy, and formerly a purser of the ship I have named, the *Alabama*. He will tell you it was his duty to make payments to naval officers and others on behalf of the confederate government, and that he received a regular formal appointment as paymaster in the confederate service from Captain Bulloch; and that with reference to the payments that he made, and they were numerous, he drew upon Fraser, Trenholm and Company, who honored his drafts; and that payments were made will be proved beyond a doubt. Then, in order that there may be no doubt, and only for this purpose, as to the character and relation to the confederate government of Captain Bulloch and Captain Tessier particularly, I shall show to you their connection with the ship I have mentioned, the *Alabama*. We are not, as I said before, trying the case of the *Alabama*, but it does so happen that the *Alabama* has become and is, and the fact will be proved, a ship of war incorporated into the confederate navy, sailing under the confederate flag, and under the command of Captain Semmes, an officer of that navy, and, therefore, I shall show you that Captain Bulloch, when that vessel left its moorings at Birkenhead, to which it never returned, went with the *Alabama*—at that time it was called the No. 290, but there is no doubt about the identity of the vessel—he returned from the vessel after she got to some point on the Irish coast, but afterward, the *Alabama* having sailed without armament, the ship called the *Bahama* was dispatched under the command of Captain Tessier; under whose command and orders and in whose interest he was acting, you cannot doubt when I tell you the result. The *Bahama* was dispatched from Liverpool for the purpose of doing that which it subsequently accomplished, I mean meeting with the *Alabama*, and she took out on that voyage Captain Semmes, whose name is so well known to us all, she took out Captain Bulloch, and was commanded by Captain Tessier, and when the *Alabama* was met with, Captain Semmes left the *Bahama* and then assumed that character which he has since sustained, of the captain and commander of the *Alabama*, and Captain Tessier re-

turned to Liverpool, bringing Captain Bulloch with him. I mention these circumstances for the purpose of leaving no real practical doubt on your minds that these persons are and have been acting as the avowed and undoubted agents of the confederate government. It is of importance for the case of the Crown that you should adopt that conclusion, if the facts satisfy you it is right, because then the fact of interference, meddling, and control during the construction of this vessel, and its arrangement on the part of these persons comes to have its significance, of which it would be entirely devoid unless this connection between the individuals and the confederate government was satisfactorily established. Other supplies of arms and ammunition were transferred from the Bahama to the Alabama, and those entirely or in part (we shall find how that is by the evidence) came from the stores of Messrs. Fawcett, Preston and Company. We know from what has happened, I may treat it as a matter of history, that the Alabama has a very formidable armament of guns, and those were manufactured and furnished by Fawcett, Preston and Company; they make no concealment of it, because you will be told that their names are on the guns to this moment. Therefore, I think the matter of connection between these individuals and the confederate government is really placed beyond any reasonable doubt.

Now, gentlemen, this is the substance of the evidence which on the part of Crown it is intended to lay before you.

Gentlemen, there is another part of the case which I had hoped to have been able to state to you as being as complete with reference to this matter of agency as the case of the Alabama. It may turn out to be so, but it would perhaps not be fair in my present state of information on this subject (for the evidence in a case of this description comes very much by dribblets) to pledge myself as to another vessel which I will mention, I mean the Oreto, which did pass to the confederate government, and is in their hands under the name of the Florida; certain evidence may be laid before you as to that vessel, but at present I should hardly feel justified in stating to you details.

The LORD CHIEF BARON. What is the name of that vessel?

The ATTORNEY GENERAL. The Oreto, or Oreto, my lord. However, I shall show to you that a vessel called the Oreto originally was built by the same builders, Messrs. Miller and Sons. You will hear the circumstances under which that vessel left Liverpool, I think Captain Bulloch on that occasion, as on the occasion of the Alabama, going out on the first or trial trip. You will hear the proceedings with respect to the crew of that vessel, the circumstances under which they were taken from Liverpool, and under which many of them returned, refusing to take naval service, and those who did return received their pay from the firm of Fawcett, Preston and Company. We shall see how the evidence will affect that vessel, and if the evidence is what I hope it will be, but I am not absolutely in a condition to say at this moment, then you will have the case of the Alabama over again in the case of the Oreto, which is now passing under the name of the Florida.

Now, before I sit down and proceed to call the witnesses, let me say a word or two as to the substance of the proof that I have detailed and on which I rely. I rely on the proof of the agency of the various individuals as satisfactory and complete. I rely on the evidence of the interference of those individuals with reference to the Alabama as not in all probability admitting of dispute, and then I rely on some important admissions which I have stated to you. Then if it be true that these persons, thus being the agents of one of the belligerents, did interfere in one or the other of the ways I have described, the question arises, Why should this be and how is it to be accounted for? I will leave my friends who appear for Messrs. Fawcett, Preston and Company, unless they may be able to displace the facts which I am instructed will be proved before you, to answer that question. What business had Captain Bulloch with the Alexandra? What business had Captain Tessier with the Alexandra? What business had any member of the firm of Fraser, Trenholm and Company with that ship? I cast about in vain for an answer to the question. I can only answer it in one way. I can only answer it in this way, that they had a like interest which they or others like them had in the construction and arrangement of the precursor of the Alexandra, the Alabama, that is to say, that interest which belonged to them as agents of the government for whose warlike purposes this ship was built and intended. At all events I think I may ask you to adopt that conclusion in the absence of some evidence which may clear up this which I venture to think is already clear, but which however may be thought, on the part of Fawcett, Preston and Company, to admit of solution in the way of proof. If it admits of a satisfactory solution in the way of proof, and if these gentlemen appear in the box, and displace, not suspicions, but very clear and satisfactory proof, unanswered, then you will have before you materials for your conclusion which may lead to a very different result from that which I think must follow if you shall be left to found your verdict entirely on the evidence I shall lay before you. However, I will not further occupy your time; there is a considerable amount of evidence as you may suppose to be laid before you, and I shall have the opportunity at a future stage of this case, should it be necessary, to trouble you with such further observations as it may appear to me, in the discharge of my public duty, the state of the evidence may then justify and require.

EDWARD MORGAN, esq., sworn, examined by Mr. Solicitor General:

I believe you are the surveyor of customs at Liverpool?—I am.

Did you, under orders from her Majesty's government, seize the ship *Alexandra* on the 5th of April last?—I did.

Before the date of that seizure had you had opportunities of observing the ship in the course of construction?—Yes; I saw her from the earliest day almost that she was upon the stocks.

Where was she when you saw her?—She was in the yard of Messrs. Miller.

Were they the builders?—They were the builders.

Do you recollect when she was launched?—She was launched in the early part of March.

Do you know the firm of Messrs. Miller & Sons, the builders?—I know Mr. Miller and I know the sons; two of the sons.

Do you know Mr. Thomas Miller? Is he one of the sons?—He is one of the sons.

Do you know the name of the father? Is it Mr. William Cowley Miller?—It is Mr. William Miller, and the other initial is C.

Was Mr. Thomas Miller, one of the sons, actively in the yard about the business of the firm?—He was.

When you seized the *Alexandra*, what was going on at the time on board the ship; was she complete?—When I seized her, about the time of the seizure the workmen were variously engaged on board her.

Do you recollect whether they were preparing anything for the hammock nettings?—Yes; they were fitting the stanchions for the hammock nettings.

Were there iron stanchions on board the ship, in the hold?—They were fitted in their places.

Do you recollect whether the masts were up?—All three of them.

Were there any lightning conductors upon them?—There were lightning conductors upon each mast.

Did you make yourself acquainted with the tonnage of the ship?—Yes.

Will you state what it is?—Her gross tonnage is one hundred and fifty-three tons, and that is by the new mode of admeasurement.

What would the registered tonnage be?—The registered tonnage would be eighty-three tons.

Is she registered as a ship?—No.

And according to what is called builder's measurement, what would her tonnage be?—I think she is about two hundred and fifty tons.

Now about the seizure; the working continued a little time, did not it?—The 5th was on Sunday; it continued to the Thursday, the 9th.

And then it was stopped?—Then it stopped.

LORD CHIEF BARON. You say then it stopped. Why was it stopped?—I stopped the workmen on the 9th.

Cross-examined by Mr. Karslake:

An officer of the customs, I think you say you are?—I am.

My learned friend said that you received orders from her Majesty's government; who gave you the order to seize the ship?—I acted under the collector of customs at Liverpool.

Who was the collector of customs?—Mr. Price Edwards.

Is he here?—Yes.

Had you any communication with any other person beside him?—None.

Had you at that time been to the office of Messrs. Duncan, Squarey & Co. at all?—I never was in their office.

Not before or since?—No.

You say you had seen the ship in the course of building?—I had.

I believe at the time it was seized it was in the Toxeth dock, was it not?—It was.

When she was built she was built in the yard of Messrs. Miller?—Yes, Messrs. Miller.

Have you known Mr. Miller for many years?—For several years.

He is an extensive ship builder, I believe, is he not, in Liverpool?—He carries on a considerable business.

Is the name up on the yard, W. C. Miller?—I think that is it.

That is the only name on the yard?—I think there is no other.

You say you know Mr. Thomas Miller?—I do.

Used he to go to the yard from time to time?—Frequently.

Mr. W. C. Miller is a man of considerable age is he not?—He is between fifty and sixty.

And Mr. Thomas Miller, whom you mentioned, is a young man of between twenty-three and twenty-four?—About that.

Have you been in charge of the ship since?—Yes.

Personally?—Yes.

You have been there every day, I suppose?—We have our officers on board.

Have you been there from time to time ?—Yes.

Since you have seized the vessel and been in possession of her, how many different surveyors have surveyed her ?—I do not know. Do you mean customs surveyors ?

We will have customs surveyors first ?—I suppose most of the surveyors have visited her ; but it more immediately belongs to my department to pay attention to her.

Most of them have visited her ?—I should suppose so ; she has been an object of attraction.

Do you know, from seeing them there, that they have been there ?—I do not. I never saw any other surveyor there but myself.

Excluding the customs surveyors, how many persons engaged in ship building have visited the ship ?

Mr. ATTORNEY GENERAL. That is to say, whom you have seen.

I have seen one, one shipwright, examining her.

What was his name ?—I do not know ; I forget it.

A Liverpool man, is not he ?—Yes, he is a Liverpool man.

You can recollect his name if you try ?—No, I cannot at the moment.

You will recollect it by and by ?—Perhaps so ; if I heard it I should know it.

How long after you had seized the vessel did you see him there ?—Perhaps three weeks.

Have you seen the same man here ?—No.

Did you see Mr. Dawson examining the vessel ?—Yes, that is the name.

He was the first person you saw inspecting the vessel ?—Yes, he was.

Mr. Hobbs, did you see him ?—Mr. Hobbs ; no, I did not see him inspecting the vessel. I went down to the vessel with Mr. Hobbs.

Who is Mr. Hobbs ?—He is admiralty agent.

Mr. Phillips, did you see him there ?—I did not see Mr. Phillips there.

Did you go with him ?—No.

Did you go with Captain Inglefield ?—No.

Did you see him there ?—No.

Re-examined by Mr. Solicitor General :

Did you understand that Messrs. Miller carried on business under any firm ?—I think so ; I have heard so.

By what firm were Messrs. Miller known at Liverpool ?

Mr. KARSLAKE. I object to that question.

Mr. SOLICITOR GENERAL. Do you know under what firm Messrs. Miller carried on business at Liverpool ?—It stands in the directory as Miller and Sons.

Mr. KARSLAKE. I must object to the question being put in that way.

Mr. SOLICITOR GENERAL. (to the witness.) Is that firm, to your knowledge, known at Liverpool as Messrs. Miller and Sons ?

LORD CHIEF BARON. Have you transacted business with them, or seen business transacted with them ?—I have not transacted any business with them.

Have you seen any business transactions with them ?—No ; I have been told since—

Mr. KARSLAKE. You must not continue your answer.

JOSEPH ACTON sworn, and examined by the Queen's Advocate.

Where do you reside ?—At No. 4 court, Blair street.

Blair street, Liverpool ?—Yes.

Do you know the firm of Messrs. Miller and Sons ?—I do.

Were you ever employed by them ?—I have been.

How were you employed by them ?—As watchman, night and day.

When was that ? When did you begin to be employed as night and day watchman ?—Fifteen months ago ; rather better ; somewhere about that.

When did you cease to be employed by them ?—About six or eight weeks ago.

When you were in Messrs. Miller's service, do you recollect the Alexandra being constructed ?—Yes.

Built in their yard ?—Yes.

Did you ever hear them, that is, either Mr. Miller or his sons, and people speak of the Alexandra by any name ?—Yes.

SIR HUGH CAIRNS. Before my learned friend claims an answer to that question, I should ask your lordship to consider whether a statement made, supposing a statement were made, by one or other of the Messrs. Miller, in the present state of the cause, can be any evidence against those for whom I have the honor of appearing, namely, Messrs. Fawcett, Preston & Company.

LORD CHIEF BARON. The first question now put seems to me to be unobjectionable. The witness, I think, ought to be cautioned as to any answer he gives to any ulterior question. The statements of some of the firm who are building the ship may be very good evidence as to some matters connected with her, such as whether she was made of teak or of oak, whether certain parts of her were steel or cast iron, and so on ; but the ulterior purpose of her being built, as disclosed by them, may affect them. A

question will arise, I think, about it, and then I shall wish the question to be discussed. Fortunately, I shall have an opportunity of taking the opinion of my brother Martin, who is sitting in the adjoining court, and I shall have his assistance in coming to any conclusion.

THE QUEEN'S ADVOCATE. The next question I am going to put is this. Do not answer this question until you hear my lord's opinion upon it, or rather until you are told. You say you heard the Alexandra spoken of by Messrs. Miller and Sons.

LORD CHIEF BARON. You had better put the question to me, and not to the witnesses, which you propose to put.

THE QUEEN'S ADVOCATE. The question I am about to put is this: Did you ever hear the Alexandra described by Mr. Miller or by his sons, or called by any name or any description?

LORD CHIEF BARON. That is to show that the name by which she was called had some connection with her supposed ulterior purpose.

THE QUEEN'S ADVOCATE. Certainly, my lord.

SIR HUGH CAIRNS. Does my learned friend use the term "name," as we use the name of a ship?

THE QUEEN'S ADVOCATE. No, by any name or description.

LORD CHIEF BARON. I may take it at once that it was a question the object of which was to show what was her ulterior purpose and destination.

MR. ATTORNEY GENERAL. I should submit rather to determine what her then character was, what kind of a ship she was; that would relate not to her destination, but to her then condition and class.

LORD CHIEF BARON. That could be proved by anybody else who saw her. You see, Mr. Attorney, one should be very cautious not unnecessarily to raise any difficulty on the question of evidence. If it be a question merely whether the ship was seventy feet long and twenty feet wide, whether she was broad in such a part of her and narrow in another, then that may be proved without taking the expression of one of the Millers about it; but if it is meant by what he said of her to give a character to her of a different kind, then I think it is as well at once to raise the question.

MR. ATTORNEY GENERAL. We certainly want to obtain, as we suppose, what was alleged as descriptive of the kind of ship at that time.

LORD CHIEF BARON. That is the use that was to be made of her.

MR. ATTORNEY GENERAL. No doubt the use would turn upon it, at the same time it is descriptive of her present state.

LORD CHIEF BARON. A description of the vessel may be obtained from anybody who has seen her.

SIR HUGH CAIRNS. Now, my lord, we see that there are two objects.

LORD CHIEF BARON. Do you object to that question?

SIR HUGH CAIRNS. I object to that question, and I am very glad we understand exactly the objects of the question, because we shall not be arguing at cross-purposes with regard to it. I understand my learned friends to desire an answer to that question in order to elicit, as they suppose, a statement made either by Mr. Miller or one of his sons, which would show the destination and the object intended to be effected by the vessel in question. Now, my lord, I object to that upon two grounds; first, upon the very tenable ground which I may as well mention in order that your lordship may have the whole question before you. This is a question put with regard to statements said to have been made by Mr. Miller or his sons.

MR. ATTORNEY GENERAL. We will take the senior Mr. Miller for the present.

SIR HUGH CAIRNS. Your lordship will be good enough, then, to consider the question as not being asked in this form: "Did you hear anything from Mr. Miller or his sons?" but, "from Mr. Miller, senior?" My learned friends limit it to that, and that narrows the point which we have to discuss.

MR. ATTORNEY GENERAL. The first question, that is.

LORD CHIEF BARON. Not "or his sons."

SIR HUGH CAIRNS. That is struck out.

MR. ATTORNEY GENERAL. For the present.

SIR HUGH CAIRNS. The question is this: Did you ever hear the Alexandra described by any name or description or character by Mr. W. C. Miller? And I submit that in this present stage of the cause no answer to that question could be evidence. If the object is to show that, as a matter of fact, the vessel was of a particular build or mold or description or character, that can be proved like any matter of fact by a witness who will come forward and tell us anything he wishes to tell us about the vessel. If the object is not to ascertain what the vessel was, or what peculiarity there was about her, but what certain persons said about that vessel and her intention, then we must consider who is the person said to have made these statements. Now, I want to know by what possibility, at this stage of the cause, can a statement made by Mr. Miller as to the object or destination of the vessel be evidence in the cause. I agree that if Mr. Miller, while performing a certain work upon the vessel, makes a statement about the work he is performing, it may be part of the evidence about the work

done to the vessel, but, taking an example, supposing Mr. Miller said, in conversation at a dinner party, or anywhere you please, "that vessel, the *Alexandra*, is a pirate; I say she is a pirate," what evidence can that be against Messrs. Fawcett, Preston & Company. What evidence can this be at this stage of the cause until we in some way couple Messrs. Fawcett, Preston & Company with Messrs. Miller, so as to make declarations by Messrs. Miller declarations affecting Messrs. Fawcett, Preston & Company. Supposing the facts were thus, we do not know how it was that the vessel came to be built by Messrs. Miller; we do not know when it was and at what stage that Messrs. Fawcett, Preston & Company acquired their interest in it. I apprehend that at present the statement made by Messrs. Miller as to the object or end of the vessel is wholly irrelevant. No person knows what the object was at the time spoken of—no person knows whether that object continued to be the object afterward. No person has stated, up to this time, anything with reference to the connection between the persons said to have made the statement and those persons who are now admitted to be the owners of the vessel. In this stage of the question, I submit to your lordship that no such statement can be received as evidence.

Mr. KARSLAKE. I also submit, my lord, that this statement cannot be received as evidence at this stage of the cause. My learned friends for the Crown have put certain persons interested in the vessel upon the record. The statement is this: that Mr. Miller was engaged in building the vessel which found its way into the Toxteth dock, and was seized by the government, and which vessel was afterward claimed by those persons who are now on the record as defendants. The object now is to ask whether, at some earlier period, Mr. Miller, in whose yard the vessel was being built, gave a particular description of the vessel in the course of construction. I submit that it is clear, as against those who are defendants upon this record, that the statement of Mr. W. C. Miller is totally irrelevant, and that, moreover, any statement which he did make cannot possibly bind the defendants, and that the question must be held, therefore, to be inadmissible.

Mr. ATTORNEY GENERAL. I submit that the question is admissible. The question is no doubt whether a certain expression was used by Mr. Miller, *ar.*, but it is not whether any idle expression made independently of and quite without connection with the construction of the vessel, was so made, but whether, in the course of the construction of the *Alexandra*, which would involve, of course, the giving of orders and directions by Mr. Miller to the workmen and others, the *Alexandra* was spoken of by him as matter of description, or in the way of description by any particular name or term applicable to a ship. Did he speak of it (I will not use the word which may be supposed to be intended to be obtained in the answer) in speaking of Read giving orders with reference to the *Alexandra* as a steamer, sailing vessel, or a propeller, or a screw steamer, or by any other description familiarly understood when spoken of with reference to a ship? The question is in the course of construction, which, of course, is an act done, and at a time when to all appearance the *Alexandra* was entirely and exclusively in the dominion and under the control of Mr. Miller, or of Messrs. Miller and Sons. Did Mr. Miller—we confine the present question to him when speaking of the vessel with regard to its construction and in the yard—describe it as a vessel of any particular description? Now, my lord, I submit that that is not a question of hearsay or a statement used independently of and unconnected with the act—it is a descriptive term only; it is not, in the proper sense of the term, a statement or a narrative; but in the course of the construction of a vessel, a builder must use some term or other in describing it when he speaks of it to those whom it is his duty to speak of it. The question really amounts to that. What term did Mr. Miller use upon those occasions with regard to the *Alexandra*? I submit that no valid objection has been urged to the question, and that it ought to be admitted.

Mr. SOLICITOR GENERAL. On a double ground, it appears to me, my lord, that this question is really admissible. My learned friend, the attorney general, has mentioned one which would apply under any circumstances where the question relates to the declarations of the builder of a ship who is at the time engaged in the building of that ship, and must necessarily describe the ship by some denomination or other in speaking of it in the yard. To object, for instance, if the object of the question had been to ascertain that she was called the *Alexandra*, or that she was called No. 290, as the *Alabama* was, or to ascertain any denomination, without significance, by which that ship was known in the yard, would have been an objection which, no doubt, would not have been taken. But if the ship is spoken of by a denomination which has significance, exactly upon the same principle on which you would admit the evidence of the manner in which the person engaged in building her spoke of her in the yard, when there was no significance, it would be equally applicable when there was significance, because in both cases the declaration has reference to the *res gesta* of the business; and it is as necessary in such business that the ship should be identified by a particular description when the directions and orders concerning her are given to the workmen, as it is that the material, the teak, the oak planks, or any other timber, should be spoken of by intelligible words of description. And to attempt to shut out proof of the language used

in the yard by the builder when building and giving his directions to the workmen, as part of the *res gestæ* of that yard, would, I humbly conceive, be contrary to every principle of evidence. But that is not the only ground upon which the objection is inadmissible. My learned friends say that this is not evidence against Messrs. Fawcett, Preston and Company, who are the present defendants upon the record. How did they become the defendants on the record? They became the defendants on the record because they themselves, under the statute, came forward to make the claim as claimants, the Crown not alleging that they had a title and the Crown not admitting their title. They made the affidavit which, under the statute, entitled them to a *locus standi* as defendants upon the record. What is that affidavit? That at the time of the seizure they were the owners of the ship, that is, the owners upon the 5th of April, when she was seized. There is no admission by the Crown.

LORD CHIEF BARON. Does that appear?

MR. SOLICITOR GENERAL. It may be said to be a part of the record.

THE QUEEN'S ADVOCATE. The statute requires it.

MR. SOLICITOR GENERAL. Yes, the statute requires it; the 309th section of the statute. Perhaps it will be as well to refer to it. Under the statute the mode of proceeding in these cases is regulated by the 309th section. Your lordship knows that originally there is no defendant at all. The statute is the 16th and 17th Victoria, chapter 107. The Crown does not come into the court alleging that Messrs. Fawcett, Preston and Company had any interest or any title.

LORD CHIEF BARON. Who are the parties now making the claim?

MR. ATTORNEY GENERAL. Messrs. Fawcett, Preston and Company, Mr. Sillem, and others.

SIR HUGH CAIRNS. They are the defendants.

MR. SOLICITOR GENERAL. Not one of the individual defendants is either a Mr. Fawcett or a Mr. Preston.

SIR HUGH CAIRNS. That is a mistake.

MR. SOLICITOR GENERAL. Yes; there is a Mr. Preston, not a Mr. Fawcett.

LORD CHIEF BARON. The persons who appear are now the defendants, and they claim the vessel?

MR. SOLICITOR GENERAL. Yes; in the character of claimants under the statute.

LORD CHIEF BARON. How does that show that the vessel was ever the vessel of Messrs. Miller and Company?

MR. SOLICITOR GENERAL. I do not say it was, my lord.

LORD CHIEF BARON. The builder of the vessel is not necessarily the owner.

MR. SOLICITOR GENERAL. He is *prima facie* the owner. Possession is *prima facie* evidence of ownership. The evidence which has been laid before your lordship down to the present time shows that the vessel was built by Messrs. Miller and Sons, and that it remained in their possession till at or about the time of seizure. Against that, in the present stage of the cause, you have nothing except the affidavit of the claimants, upon which they have come in, alleging that they were the owners at the particular date of the seizure, and not alleging ownership at any earlier time. You have, therefore, before you no evidence whatever as to ownership anterior to the time of seizure, and the legal presumption of course is, ownership according to possession. And we having shown that the ship was built by Messrs. Miller, in Messrs. Miller's yard, with their material, and under their orders —

LORD CHIEF BARON. They are compelled to make the claim in that way by act of Parliament.

MR. SOLICITOR GENERAL. It is so.

LORD CHIEF BARON. It would have been idle for them to have said that they were the owners at the time of the seizure and long before.

MR. SOLICITOR GENERAL. Quite so; the statute does not require it.

LORD CHIEF BARON. The statute does not require it; therefore it would not have been according to the usual course of business for them to make that declaration.

MR. SOLICITOR GENERAL. That is so; and therefore I do not say that the form of the affidavit is to be taken as any evidence that they were not owners at an earlier time, but merely this: they come in alleging simply that they were owners at that time. And with regard to the time at which they became the owners, and the means by which they became the owners, and the previous history of the ownership, the affidavit leaves that entirely uncertain. Until you have evidence offered by them you cannot possibly tell when that happened. Of course it will be obvious how very easy, in any question of suspicion of this kind, it would be for the real persons to destroy the application of the most important evidence as to the circumstances concerning a vessel, by, as soon as a seizure is anticipated, making a transfer which will enable any one to whom the transfer is made to make an affidavit which could entitle their counsel to get up during the opening of the Crown's case and say the evidence of what the builders stated while the vessel was in building is not evidence against us, because we became owners at some period or other which does not at present appear, and we were the owners of the vessel at the date of the seizure, and we are fully entitled, if that were

necessary, to rely upon the evidence of possession at the earlier period of which we speak, and the evidence of ownership, which is *prima facie*, afforded with respect to that time by that possession. There are no grounds upon which the court can infer that Messrs. Fawcett, Preston and Company were owners at any earlier period than that which they say they were. There is evidence before the court of the building of the ship by the builders and the possession of the ship by the builders in their yard; and in that stage of the case evidence of what the builders admitted or said concerning that ship is surely, we submit, admissible. They are *prima facie* owners. It is not necessary, of course, that they should be so, because it is possible that the builders might have been under a contract which might have vested the property from time to time as the building proceeded; but it might not have been under such a contract. It is for those who affirm the existence of such a contract to prove it. In the mean time and until the evidence of such a contract and of such a vesting of title is given, it is not to be presumed or inferred against the evidence of possession; and an act by the builders themselves, so far as the evidence before your lordship goes with regard to a ship in their yard, and the intention and the purpose with which they were acting, is at this stage of the cause in itself material. I say, both with reference to their declaration and the purpose of their operations characterizing the *res gestæ* of their yard, it is proper and right that this evidence should be admitted.

THE QUEEN'S ADVOCATE. I am sure your lordship, in coming to a decision upon this very important question, will bear in mind the peculiar character of the proceedings in this case. You are aware that it is a proceeding *in rem*, and the object of the question is to ascertain what the character of the *res* is; and surely, my lord, that is a proper question to be put with reference to the builder at the time when he was in possession of the vessel and when he was giving orders for the superintending of its actual construction at the time. My lord, I can add nothing to that part of the argument which shows that the ownership of Messrs. Fawcett, Preston and Company does not exist further back than the time of the seizure. I can add nothing to the argument which my learned friend the solicitor general has used. But I submit to your lordship that to shut out this evidence before the *prima facie* ownership of Mr. Miller as the builder has been displaced by any evidence on the other side, would be to shut out one of the most material means of ascertaining what the real character of the *res* itself was. I therefore submit that your lordship should admit the evidence.

SIR HUGH CAIRNS. My learned friends who appear for the Crown have stated the grounds on which they support this question. I cannot help expressing some surprise at the extremely different manner in which they put forward their arguments, arguments which are perfectly antagonistic in their character. I will take, first, the attorney general. My learned friend, the attorney general, very fairly puts his argument in a way consistent with his opening, which those who followed him have not done. My learned friend the attorney general very fairly, I say, puts his argument in this way. He says there were certain gentlemen building a ship, acting, no doubt, merely as builders for others —

MR. ATTORNEY GENERAL. No.

SIR HUGH CAIRNS. My learned friend must not turn from his opening, for your lordship will remember what his opening was. He said, I will show you that Messrs. Miller were building that ship, but that the building of the ship was superintended and controlled by others, who were interfering and directing and giving orders, and the conclusion must be that they were the persons who were the organizers of the building of the ship for the purposes which they had in view. My learned friend, of course, cannot depart from the opening. Now, I want your lordship to consider simply the argument put forward. Is it now to be said, that if a builder is employed to build a ship, the extent of his agency being to do that which he is employed to do, and nothing more, if he chooses to say, from credulity or misapprehension or otherwise, in some gossiping conversation to any third party, while the ship is going on, "My notion is that that ship building will be employed in a particular way," that is to be evidence against those who *ex hypothesi* are employing him to build the ship? I think, if that is the argument now to be maintained, your lordship will not have much difficulty with it. I will now take the argument of my learned friend the solicitor general. The argument which he puts forward is upon a different ground. He says, supposing it was merely to identify the vessel; if it was merely to identify the vessel, you have a right to ascertain what the builder called her, or the manner in which he spoke of her. As to the way of identifying her, there is no doubt, first of all, with regard to identity, and there is no need to ask any question as to the identity of the ship. But, in the next place, I demur to the proposition. I say, if there were an issue as to the identity to be discussed, as to whether the vessel was or was not the identical one, a statement made by the builder in conversation could not affect a person who is admitted, for the purpose of this discussion, to be the real owner of the ship at the present time.

The next observation of my learned friend, the solicitor general, is this: He says, you find the ship in the possession, at a particular time, of Messrs. Miller. Possession is *prima facie* evidence of ownership, and the Crown are entitled to assume, for the pur-

pose of letting in this evidence, that Mr. Miller was the owner at that time. In the first place, I deny that there is any presumption at all of ownership of the kind. There are certain rules of law with regard to the possession of landed property and freehold estate, saying that possession shall be *prima facie* evidence of ownership; but I say there is no presumption of this kind when you are dealing with the circumstance that a particular ship is in the hands of a builder, a builder by trade, whose trade is to build ships for other people; there is no presumption at all of ownership necessarily following from the possession—it may or it may not be—there is no presumption one way or the other. I ask you to see what is the consequence of the argument. What does my learned friend the Queen's advocate say? and there is no better way of putting it. He says, here is a proceeding by the Crown *in rem*, but the way in which it is tried is between the Crown and certain defendants—certain persons have come in and made an affidavit as to their being the owners of the vessel. And then I take the words of my learned friend the attorney general, who says that it must be admitted on this proceeding that Fawcett, Preston and Company are the owners of the vessel, as they allege they are.

MR. ATTORNEY GENERAL. That is, at the time of the seizure.

SIR HUGH CAIRNS. That is, at the time of the seizure. Your lordship has very properly pointed out that it would have been improper and irrelevant for the affidavit to have stated anything more than the ownership at the time of the seizure. Now, it is admitted that Messrs. Fawcett, Preston and Company were, at the time of the seizure, the owners of the vessel. Now, take the case of some tobacco that is seized by the Crown as having been smuggled. A particular person comes in and defends, and is admitted to be the owner of the tobacco at the time of the seizure. Would anybody mean to say, for penalties or for criminal punishments, that you could give evidence by some former owner, or, I will say, holder. I will not use the word "owner," but, in order to make it more like the present case, I will say some former holder of the tobacco, some person in whose possession the tobacco was a year ago. If this person said this tobacco is tobacco which, according to my notion, will be smuggled hereafter, does anybody mean to say that the person admitted to be the owner at the time of the seizure is to be bound by a gossiping statement of that kind, of every person in whose hands that tobacco may happen to have been found for ten minutes since the time of its manufacture? I apprehend, my lord, that a more unsubstantial argument was never submitted to the court, and I hope your lordship will not accept it.

LORD CHIEF BARON. It appears to me that I cannot receive the statement of the declarations or expressions of Mr. Miller, senior, for the purpose of producing any such effect as the object which is put forward. I think the question that has been raised about the rule of evidence in this case might be very shortly disposed of in this way: The present is a proceeding against one set of defendants. Now, neither Mr. Miller nor the sons of Mr. Miller are parties. Either, then, the evidence to be given would prove nothing against them or any one else; or if it would, it would be an admission by one man of another man's guilt, and I think that is not evidence that I can receive. But I do not think it right to leave the question merely in that dry and short way, but to notice the arguments that have been used on the part of the Crown. With respect to the ownership of the vessel, there can be no doubt that in one sense, while the ship was still in the hands of the ship-builder, and not yet perfect, the contract not being completed, in one sense it may be said to have been, and probably really was, the actual property of the builder. But inasmuch as the evidence before me now is that the defendants in this information claim that it was theirs at the time of seizure, I must take that *prima facie* to be true; and then I think it does not at all follow that they were not the persons who employed Messrs. Miller to build the ship; and though in one sense it might be said to be Messrs. Miller's property till they had parted with it, yet they were employed to construct the vessel on behalf of those who are now making the claim upon this information. Now, would a declaration of any sort, the tendency of which would be to produce an impression or to give a character to the vessel, would a declaration by the ship-builder at all be binding against the person who employed him to build the ship? He is employed to build the ship; he is not employed to make any admissions or statements as to the nature of the ship; he is employed simply to build it. But now it might happen, and what was suggested in the course of the argument by the attorney general would be perfectly true. If some direction were given to build it in a particular fashion, and as the reason something were pointed out, that possibly might be evidence; but the officer who is now in the witness-box I do not understand to have had anything to do with the building of the ship at all.

THE QUEEN'S ADVOCATE. He is the watchman of the yard, my lord.

LORD CHIEF BARON. So he may be, but he had nothing to do with the actual construction of the vessel. Assuming, then, that the vessel was not the property of the Messrs. Miller, no declaration by them could at all affect their employers. We can put that certainly in a very intelligible instance. Supposing a housebreaker were to employ a shoemaker to make a pair of shoes to give facilities to his depredations by being perfectly noiseless, would the declaration of the shoemaker that he was constructing

those shoes so as to make the least possible noise be evidence against the party employing him if he were charged with housebreaking? It would not. I think that is an illustration which to my mind clearly proves the present case, though it certainly has not the dignity which belongs to the present inquiry. It is my opinion, therefore, that I cannot receive this evidence. Before I finish my judgment upon the subject, I would wish to say that I extremely approve of the candor on the part of the counsel for the Crown in meeting the case fairly, and at once stating what is the object of the question and what is the conclusion which they propose to draw from it. My impression is, that, assuming that the answer would have some weight or effect in the present inquiry, I think it cannot be given in evidence against the present defendants. If the person who is supposed to make the statement made it from any knowledge, made it by any authority, and made it under circumstances that would give any weight to his opinion or to the expressions which he used, he might be called as a witness to say, "I gave it that character; I called it by such a name, because I knew by the intimations of A, B, C, D, or so on, that so and so was to take place, and therefore I formed that conclusion."

MR. ATTORNEY GENERAL. My lord, I mention this now to avoid any misunderstanding on the part of your lordship. I shall feel it my duty to tender a bill of exceptions to your lordship upon the rejection of this evidence.

LORD CHIEF BARON. If you will allow me, I will speak to my brother Martin upon the subject. I assure you I believe I have decided according to the rule of evidence. I assure you I think I should very much endanger your proceedings if I were to admit the evidence.

MR. ATTORNEY GENERAL. We have considered the matter, my lord, and of course we bow to your lordship's decision.

LORD CHIEF BARON. I think I should put in peril the whole proceedings if I were to admit the answer. If you wish me to do so, I will consult my brother Martin.

MR. ATTORNEY GENERAL. I do not express any desire upon the subject. I only express the wish that it should not by any means surprise your lordship if, at the proper time, a bill of exceptions is tendered.

LORD CHIEF BARON. Can a bill of exceptions be tendered? I see under the new act that it may be so.

MR. ATTORNEY GENERAL. It is your lordship's ruling, and of course we bow to it with every respect upon this matter of law.

QUEEN'S ADVOCATE (*to the witness*). Do you know the firm of Fawcett, Preston and Company?—Yes.

Do you know any of the men whom they employ by sight?—No.

Do you know a person of the name of Hamilton, a Mr. Hamilton?—I have seen him. Have you ever seen him in Messrs. Miller's yard?—I have.

Have you ever seen him there during the course of the building of the vessel *Alexandra*?—Yes.

Have you seen him there more than once?—Yes.

Frequently?—Yes.

You say frequently?—Yes.

Can you tell at all how often?—Yes; once a week, or twice a week.

Did he take any notice of the *Alexandra* (I do not ask you what) when he came into the yard?—Yes, a little.

Did anybody come with him?—Yes.

On those occasions?—Yes.

Do you know the name of that gentleman?—Bulloch, I believe.

Did they ever look at the *Alexandra* together?—Yes.

More than once?—Yes.

Besides looking at her, did they do anything with respect to her?—No.

I do not ask you what; did they give any orders respecting her?—Not that I am aware of.

LORD CHIEF BARON. They did nothing but look at her; they gave no orders?—No.

QUEEN'S ADVOCATE. Did you ever hear Mr. Hamilton speak to Mr. Miller upon the subject of the *Alexandra*? I do not ask what he said, but did you ever hear him?—Yes.

Did you hear him do that more than once?—Yes, once at least.

Did you ever hear this person of the name of Bulloch that you have mentioned speak to Mr. Miller?—Yes.

Upon the subject of the *Alexandra*?—Yes.

Do you know a Mr. Mann?—Yes, I do.

What firm does he belong to?—Messrs. Fawcett, Preston and Company.

Have you ever seen him on board the *Alexandra*?—I have.

When?—At different times.

While she was in course of construction?—Yes.

Have you ever heard him give any orders respecting her?—No.

Did you say you had seen him more than once?—Yes.

How often do you think you have seen Mr. Miller on board the *Alexandra*?—It might be three or four times.

That was while she was in course of building in the yard?—Yes.

When he came did he stay a short or long time when he was on board?—Perhaps he would be an hour or half an hour.

On board the *Alexandra*?—To and fro.

Did you ever see him go on board any other ship when he was there?—I do not recollect it.

As to Mr. Bulloch and Mr. Hamilton, when they came to the yard, how did they get in?—Through the yard gate.

Who let them in?—Myself, for one.

LORD CHIEF BARON. You mean they got in exactly like other people?—Yes, just so.

QUEEN'S ADVOCATE. Did they have an order, or did they come in like anybody else?—They had an order from one of us.

Was that the order usually given to everybody, or was it a particular order?—No.

What was it?—Generally an order for them to go through, that is all.

Was it the usual or was it a particular order?—Not a particular order.

LORD CHIEF BARON. Had the order anything to do with the *Alexandra*?—Not that I am aware of.

Was it merely to let them into the yard?—To come into the yard.

The QUEEN'S ADVOCATE. When Mr. Mann came, did you see him go on board the *Alexandra* in company with Mr. Bulloch or Mr. Hamilton at any time?—No.

Cross-examined by Mr. KARSLAKE:

Let us understand what you were exactly; you were a watchman, were not you?—I was.

You had nothing on earth to do with building ships?—No.

I believe your duty was to stand at the gate?—Yes.

And you continued that duty until you were discharged?—Yes.

When did Mr. Miller discharge you?—I do not know.

You have not the least notion when that was?—No.

That you swear?—Yes.

You are sure you were discharged?—Yes.

You tell those gentlemen that you have not the least notion when?—No.

When, not why, is my question?—On the Thursday, perhaps it might be.

Last Thursday, was it?—No.

When was it that you were discharged from Messrs. Miller's?—I do not know.

When was it done?—When I was leaving the office.

How long ago?—That makes all the difference; perhaps six weeks.

After you left them what did you do?—Nothing at all.

And you have been doing nothing ever since?—Yes, I have done something.

What have you been doing since?—Driving a car.

Driving a cab, is it?—Yes.

After you had left Messrs. Miller's, did you go and see a man called Barnes?—No.

Did you see him?—I have seen him.

Did you take Barnes down to Mr. Maguire's?—I did not.

Did you know that he went?—No.

That you swear?—Yes.

You do?—Yes.

Did you take him to Cousins's, to a man called Cousins?—No.

Did you see him there?—No.

Do you know Mr. Maguire?—Yes.

What is he?—He is a detective.

Did you see Messrs. Duncan, Squarey and Company?—I did not see them.

Did you go to the office?—No, not that I am aware of.

You are likely to know if you did go, you know?—Yes.

Did anybody from their office come to you?—Where is their office?

Never mind that. Did anybody from Messrs. Duncan and Squarey's office come to you?—I do not know anything about it.

How long after you had been at Mr. Miller's did you see Maguire?—A fortnight or three weeks, perhaps.

Mr. Miller has a considerable ship-building yard, has he not?—I believe so.

You are not prepared to swear that, are you?—No.

Although you were there many months?—Yes.

How many months were you there?—Twelve or fifteen months.

A good many people came to the yard on business?—Yes.

A great many in the course of the day?—Yes; they do.

And your place was at the gate; not in the yard among the ships, was it?—No.

In the gate?—Generally.

You say you believe that Mr. Bulloch came?—Yes.

What do you know of Mr. Bulloch? Did you ever see him? How do you know it was Mr. Bulloch, the person who came?—He is a little man.

How do you know that it is Mr. Bulloch?—I do not know that it is he.

It is easy to say Mr. Bulloch came there; how do you know it was Mr. Hamilton came?—I saw him.

How do you know him?—I know him perfectly well.

How do you know him?—I know him.

Did you ever speak to him in your life?—Yes.

What did you say to him?—I do not know.

You let him through the gate and out again, did you?—Yes.

Is that what you know of him?—Yes.

Is that all you know of him?—Not exactly.

Did you ever speak to him except when letting him through the gate and out again? I have at other times.

When you went into the service as watchman, had you been in the police force?—I had.

How long had you been out of the police force when you went as watchman?—I cannot say.

Have you got the least notion?—No.

Not the least?—No.

Several years?—No.

Several months?—Perhaps eighteen months, as near as I can state.

Re-examined by Mr. ATTORNEY GENERAL:

You mentioned a person of the name of Bulloch; was he called "Bulloch" in your hearing whenever he was spoken of?—I cannot say.

Did you ever hear him called by his name?—I do not know.

Did persons give any name when they entered the gate at your master's building-yard?—Yes.

Did you take their names?—Sometimes they might and sometimes they might not.

Sometimes the names were taken?—Yes, some of them.

While you held your place, was any name given by this person whose name you say was Bulloch?

Mr. KARSLAKE. What do you mean by that?

Mr. ATTORNEY GENERAL. Given by Mr. Bulloch?

WITNESS. No.

Am I to understand that Mr. Bulloch never did to you give a name?—No.

Are you sure that he came with Mr. Hamilton?—I have seen him with Mr. Hamilton.

Can you describe the sort of man that you call Mr. Bulloch; what sort of man was he?—

A little man, with dark whiskers and beard.

LORD CHIEF BARON. A little man with short whiskers, is that what you said?—A little man, with dark whiskers.

Mr. ATTORNEY GENERAL. Was he dressed in any particular way that you can speak to?—I do not know.

You cannot speak to his dress?—No.

The witness withdrew.

Mr. WILLIAM BARNES SWORN; examined by Mr. LOCKE.

Do you live at No. 7 Longville street, Toxteth Park, Liverpool?—Yes.

Are you an engineer?—An engine-driver.

When did you go into Messrs. Miller's employment?—It is turned four years since first I went into their employment.

Into their ship-building yard at Toxteth Dock?—Yes.

What employment had you there?—At driving Mr. Miller's engine.

When did you leave them?—It is nearly three months ago.

For what reason was it that you left them?—I committed myself.

In what way did you commit yourself?—I got a sup of drink and went away from my work.

Do you recollect a steamship called the Oretto that was built in their yard?—Yes.

Was she built by Messrs. Miller?—Yes.

How long ago is that?—I think it would be about sixteen months since she went away.

Was she launched about sixteen months ago?—Yes, I think so; I am not exactly sure.

Do you recollect two gunboats called the Penguin and the Steady, being built in your yard?—Yes.

Were those built for the English government?—Yes, I believe so.

Gunboats?—Yes; they were called gunboats.

The Penguin and the Steady?—Yes.

These were built by Messrs. Miller for the English government?—Yes.

About three years ago, was it?—Something about three years ago.

Used you frequently to go over the boats and examine them?—At dinner time and breakfast time I used to go about and have a look at them; I used to go on board sometimes.

You know a gunboat I suppose from a bumboat; you know a gunboat when you see it?—Yes, I know such things; it was built properly.

You know that the Penguin and Steady were both gunboats, and built as gunboats?—Yes, and called gunboats.

Do you recollect the screw steamer called the Alexandra being built there?—Yes.

Did you frequently go over her whilst she was building?—Yes, at dinner time, and breakfast time, and that.

What is she like?—She is like the other gunboats, only smaller.

Is she like the Oreto?—Yes, she is like her, only smaller.

Like the Oreto, the Penguin, and the Steady, only smaller?—Yes, only smaller.

Do you recollect during the time that the Alexandra was being built Captain Tessier coming to your yard?—Yes.

Who was he?—I believe that he was the captain of the Phantom.

What was the Phantom?—She was a steel boat.

Was she both steel and steam?—Yes.

Where was the Phantom being built?—In Messrs. Miller's yard.

Was the Alexandra being built at the same time as the Phantom?—Yes.

And when Captain Tessier came what did he do? What vessel did he look at?—He merely used to go round and have a look; he never took so much notice of the gunboat, at least of the Alexandra, as he did of the Phantom.

Did he take notice of the Alexandra?—Yes, just looking round her; I never saw him give any instructions.

You never saw him give any instructions about the Alexandra?—No.

Have you heard him give instructions about the Phantom?—No, I never did.

Which were the vessels he went to look at when he came into the yard?—Chiefly the Phantom.

Was there any other vessel that he looked at?—Yes, the Alexandra; he used chiefly to go round and have a look.

Did you know of his going round and looking at other vessels besides the Phantom and Alexandra?—Yes; he used to go round and look at them all.

Have you heard him giving directions about the Phantom, do you say, or not?—I am not certain.

Do you know Mr. Speers?—Yes.

Who is Mr. Speers?—Mr. Speers is Messrs. Fawcett, Preston, & Co.'s overlooker.

Do you know him?—Yes.

How long have you known him?—Ever since I first went to work for Messrs. Miller.

Messrs. Fawcett, Preston & Co., are engineers, are they not?—Yes.

When Speers came to your yard, what used he to do?—He seldom used to come unless they were boring the stern posts for the screw; he used to superintend that.

What vessel?—In both the Phantom and the Alexandra.

You were boring out the stern posts of the Alexandra?—No, I was not.

The men were, and you saw them doing it?—Yes.

What were they boring out those stern posts in the Alexandra for?—For the screw shaft to work.

Messrs. Fawcett, Preston, and Company furnished the machinery too?—I was led to understand so.

For the Alexandra?—Yes.

Was it brought from their place?—I cannot say it was.

When it came there did Mr. Speers superintend it?—No, he used only to superintend the boring out; it was Messrs. Fawcett, Preston, and Company's men that were there.

In the Alexandra?—Yes, and the Phantom.

They bored out those vessels?—Yes.

What was brought there to be put into the Alexandra?—I did not see anything brought there, only the boilers.

Who brought the boilers?—I cannot say who brought them.

Where were they put on board the Alexandra?—In the dock. I did not see them put on board. I saw them after they were in.

In the Alexandra?—Yes.

Where was it that you saw them in the Alexandra?—In Toxteth Dock.

Were any of Messrs. Fawcett and Preston's people there then?—Yes; the boiler makers.

Some of the boiler makers in the employ of Messrs. Fawcett?—Yes.

They were in the Alexandra, then?—Yes.

It would be about those boilers?—Yes.

Have you seen Mr. Speers there too?—Yes.

Do you recollect the Alexandra being launched?—Yes.

That was in March last, was it?—I think it would be about that time.

Do you know Mr. Mann?—Yes; I saw him in the yard.

Who is Mr. Mann?—A tall gentleman, leanish, rather like a gentleman I see on the other side of the court.

He is one of the firm of Fawcett, Preston, and Company?—Yes; I believe so.

Cross-examined by Mr. MELLISH:

What was your business at the yard?—An engine driver.

That is, you keep up the fires of the engines, is it not?—Yes; and look after the engine.

You had nothing in the world to do with the ship-building?—No.

How long have you been there?—About four years altogether; better than four years since first I went.

Had you been there all that time, or had you been away occasionally?—No, I had been away.

You left them three months ago, I think you say?—Yes, about three months ago.

What have you been doing since you left?—I have been driving a patent steam hammer since that.

Where at?—At Mr. Ryder's, the ship-builder.

Have you been there the last two or three weeks; are you in their employ now?—I work for Messrs. Cato and Miller.

You are in their employ now, are you?—Yes, I was.

Were you discharged from there also?—No; I had to come away from there to attend this.

How long ago was that?—It will be a fortnight to-morrow, I think; a fortnight on Thursday; that is the real time.

You say that three years ago, I think, some gunboats were built for the government?—Yes.

What vessels were building in the yard at the time that the Alexandra was built?—There was one called the Huddersfield.

What sort of vessel is that?—She is an iron boat.

LORD CHIEF BARON. How many vessels were in course of building in the yard altogether?—Four.

Mr. MELLISH. The Huddersfield?—Yes; the Huddersfield, the Alexandra, and the Phantom.

I think you say that Captain Tessier used to come and look round the yard, but principally at the Phantom?—Principally at the Phantom.

What sort of a boat is the Phantom?—She is a steel boat.

Is she a gunboat?—No; not that I know of.

Is she a merchant vessel?—She is like a merchant vessel.

Re-examined by Mr. LOCKE:

You say that you now work for Messrs. Cato and Miller?—Yes.

Where do they carry on their business?—At the side of the Brunswick Graving Dock.

At Liverpool?—Yes; at Liverpool.

You are still in their employ?—No; I had to leave.

Had you to leave to come up to town?—Yes.

When you get away from the business which brought you to town, are you going to Liverpool then?—I suppose so.

And going into their employ again?—I think so. Perhaps I may.

Perhaps somebody will have occupied your place?—Yes.

The witness withdrew.

Mr. ALEXANDER ROBINSON sworn, and examined by Mr. JONES.

I believe you are a joiner, living in Liverpool?—Yes.

You were formerly in the employ of Messrs. Fawcett, Preston and Company?—I was.

How long since is it that you have left?—I left about two months ago.

Was it your business there to make gun carriages?—Yes; that was my employment.

LORD CHIEF BARON. What is the name of your employers?—Messrs. Fawcett, Preston, and Company.

Mr. JONES. Was it your business to make gun carriages?—Sometimes.

Do you remember in particular making gun carriages, or helping to make gun carriages, for three guns in particular?—Yes.

What were the guns that you were making gun carriages for?—Pivot guns.

How many, I mean?—Three.

Was there one large gun?—I believe there was.

And two other smaller guns?—Yes.

There was also helping to make these gun carriages, I believe, a man named Joseph Carter, was there not?—Yes. I knew a workman by that name.

How long were you employed in making these gun carriages?—I was variously employed—not constantly.

While you were so employed, did Mr. Hamilton come to the premises?—I have seen him at times, several gentlemen—

I was just asking at present about Mr. Hamilton; did he come in company with anybody else; will you tell me?—I have seen a gentleman called Mr. Hamilton.

Did he come there while you were making these gun carriages?—Yes.

Did he inspect the making of the gun carriages?—Merely looking at them.

Do you know the boat Alexandra?—Yes.

Have you done any work upon that boat while she was in Messrs. Miller's yard?—Very little.

What was it that you did?—I was about an hour sometimes in fixing a frame for the pitch of the propeller shaft.

By whose direction did you do that?—By our foreman's.

Whose foreman was it that gave you that direction?—Messrs. Fawcett and Preston's.

LORD CHIEF BARON. He says our foreman; that would, of course, be the foreman of the person by whom he was employed.

Cross-examined by Sir HUGH CAIRNS:

Messrs. Fawcett, Preston and Company are very extensive engineers, are they not?—Yes.

They make a great many steam engines, do they not?—Yes.

For steam vessels?—Yes.

They make a great many guns, do they not?—Sometimes.

A good many in a year?—Yes.

And have done so for many years, do you not know?—Yes.

How long have you been with them?—I was twenty-two months.

And, I suppose, you saw a good many guns made in that time?—Yes.

And gun carriages?—Yes.

Why did you leave those with whom you had been living for this time? What was the reason?—To suit myself better.

You struck for higher wages, did you?—No; we did not strike.

You yourself struck?—Yes; it was to suit ourselves better.

You wanted higher wages, and you did not get them, and you were discharged?—No; we did not. We were not discharged; we went without being discharged.

There were a good many visitors, were there not, in the habit of going to Messrs. Fawcett's works to see what was done there?—Yes.

The witness withdrew.

Mr. JOSEPH CARTER SWOIN, and examined by Mr. ATTORNEY GENERAL:

Are you a joiner, living at Liverpool?—Yes.

Were you in the service of Messrs. Fawcett, Preston and Company of that town for some time?—Yes.

How long?—Seven or eight or nine months.

Are you out of their service now?—Yes.

When did you leave their service?—It would be three or four months ago.

How came you to leave their service?—For an advance of wages.

You wanted more wages and they would not give it?—Yes.

For some time before you left, in April last, were your masters, Messrs. Fawcett, Preston and Company, making machinery for a propeller boat?—Yes.

Was the boat for which the machinery was being prepared known in your workshop by a number?—Yes.

What was the number?—2,209.

Have you been on board the Alexandra since she was seized?—Yes.

You have seen her in the Toxteth dock?—Yes.

Is that the same vessel that was called 2,209?—Yes.

While you were engaged in the preparation of the machinery in Messrs. Fawcett, Preston and Company's shop was the vessel spoken of or described by any other name except 2,209?

SIR HUGH CAIRNS. I think my learned friend must put the question in another form; I do not know to what statement he refers.

MR. ATTORNEY GENERAL. I will state why I put the question. I do not wish to argue the point which has been decided. I understood your lordship to say that the answer to the question which we proposed could not be insisted upon, partly on the ground that it was not connected with the actual construction or works upon the vessel. I am now asking whether, in the course of the actual construction of the machinery in the workshops of the claimants, the defendants, as they have been called, such a particular term and description were used; it stands upon somewhat of a different footing from the former question in that respect.

LORD CHIEF BARON. Whether he ever heard it spoken of other than as the No. 2,209.

MR. ATTORNEY GENERAL. Yes, in the workshop of Messrs. Fawcett, Preston and Co. where the work was going on in the machinery.

LORD CHIEF BARON. "There was work doing, as I understand; there was work doing for the vessel which was numbered 2,209. I went on board the *Alexandra*, and I found on board the *Alexandra* the articles which had been made for No. 2,209;" that is all.

MR. ATTORNEY GENERAL. He states that the *Alexandra* was the same.

MR. KARSLAKE. Yes; we have passed that.

MR. ATTORNEY GENERAL. He has stated that the *Alexandra*, as it is now called, was the same vessel that was called in the workshop 2,209.

LORD CHIEF BARON. You say they were making the machinery that you made?—No, I did not make any of it.

That was made in your works; did you see it on board the *Alexandra*?—Yes.

SIR HUGH CAIRNS. There is no objection to that at all; we will consider the weight of it afterward. That question was put and answered without an objection on our part; but my learned friend, as I understand, now puts this question to ask the witness whether the *Alexandra*, or the vessel for which this machinery was made, was generally spoken of in some particular way in the workshop.

MR. ATTORNEY GENERAL. As 2,209?

SIR HUGH CAIRNS. I understood it; or by any other description.

MR. ATTORNEY GENERAL. That was the question I put.

LORD CHIEF BARON. I think if the object of it is to show that anybody had used any expression or uttered a single syllable the effect of which would be to give a character to the vessel tending to advance the present information, I do not think it would be admissible.

MR. ATTORNEY GENERAL. I hope your lordship understands that I put the question with reference to what was said in the workshop of the claimants.

LORD CHIEF BARON. I will go as far as this: if even among the people who were working, the vessel had acquired a nickname that nobody could mistake, that I do not think would be admissible.

MR. ATTORNEY GENERAL. I will put a question to which I think there will not be any objection at all. (*To the witness.*) Do you know the gentlemen who compose the firm of Messrs. Fawcett, Preston and Company?—Some of them.

I will give you the names; tell me if you know them?—Yes.

Do you know Mr. Preston?—Yes.

Do you know Mr. Willink?—Yes.

Do you know Mr. David Wilson Thomas?—Yes.

Do you know Mr. William Thompson Mann?—Yes.

MR. ATTORNEY GENERAL. Those are the names on the record.

LORD CHIEF BARON. You know them all?—Yes.

Then I may take it, "I know all the defendants."

MR. ATTORNEY GENERAL. (*To the witness.*) Did you hear this vessel spoken of by any one of those gentlemen, or in the presence of any one of those gentlemen, by any description except No. 2,209?—No.

While the machinery was being prepared were you frequently at work in your business of a carpenter in the erecting shop?—Sometimes.

Is that the shop where the machinery is prepared and fitted for the vessel?—Yes.

While you were there did you ever see a gentleman of the name of Hamilton?—Yes; I have seen him there.

Did you see him there frequently or seldom?—I have seen him there pretty often.

When he was there did you see whether he paid attention or did not pay attention to the machinery?—I could not say that he did particularly to any branch of it. I could not see that he did to that branch of the machinery more than to another.

Besides that machinery which was being prepared for the No. 2,209, was other machinery for vessels being prepared in the same room at the same time?—Yes.

Do you remember while the machinery was in progress for the *Alexandra* whether any gun or guns were prepared?—Yes; they were preparing some at the same time as she was in the building.

I think you said some carriages just now?—Some carriages and guns were prepared at the same time.

At the same time that the machinery was being prepared, as I understand you?—Yes.

Was it any part of your business, and were you employed with regard to the gun carriages, and the slides for those guns?—I was working at them.

You were working at the gun carriages and slides?—Yes.

You say that 2,209 was the number by which the vessel was called?—Yes.

Was there any number connected with the guns?—Yes, each gun had a separate number.

LORD CHIEF BARON. Not 2,209?—No.

MR. ATTORNEY GENERAL. How many guns were there that you are speaking of?—Three.

One large gun, was it?—Yes.

And two small guns?—Yes.

Were the small guns rifled or not?—Rifled.

You say each had its number?—Yes.

Was there a number on the gun carriages, and slides for the large guns?—There would be the same number as the guns; they would all go by the same number; each would go by its own number.

Do you remember whether there was a number upon the gun carriages and slides, fitted for the large guns?—The same number upon the carriages as upon the guns.

What was that number?—That I will not say; I will not be positive of the number.

LORD CHIEF BARON. The number on the gun carriage was the same as on the gun?—Yes, exactly.

MR. ATTORNEY GENERAL. Do you remember any of the numbers or not?—As far as opinion went. I would not swear to the number.

To the best of your recollection?—I think 2,205 and 2,204 were the numbers of the small guns; of the large one I would not say.

Have you any recollection at all about the number of the large guns?—No.

One way or the other?—No.

As to the manufacture of the guns and gun carriages, I think you said it was going on at the same time as that of the machinery?—Yes.

The whole was treated as one job?

SIR HUGH CAIRNS. He has not said so.

MR. ATTORNEY GENERAL. Was it so or not?—No.

Were they, as far as you could see, manufactured for use in the same vessel as the machinery or not?—That I could not say; they might be, or they might not be.

SIR HUGH CAIRNS.—I object to that.

MR. ATTORNEY GENERAL. Can you tell us as a workman.

LORD CHIEF BARON. He says he cannot.

MR. ATTORNEY GENERAL. Did you see the Alexandra after the seizure, or after she had been launched?—Yes. I have seen her after she was seized, and after she was launched both.

You have seen her after she was seized?—Yes.

Can you tell us about how high the larger gun, whatever its number may have been, would stand?—The height of the gun?

Yes, on the gun carriage?—It would stand about four feet.

And the smaller ones?—About three, I think.

You told us that you knew Mr. Sillem, one of the partners?—Yes.

Was he frequently in the shop of his own firm at the time when this machinery and the guns were going forward?—Yes.

Did you notice whether he did or did not pay any particular attention to the guns?—They were generally there; he was the principal partner in that line.

That is his line?—Yes.

Have you seen from time to time Mr. Hamilton with Mr. Sillem in the shop?—Yes.

I mean at this time when the machinery and the guns were in preparation?—Yes.

Have you at any time or times heard Mr. Sillem speak of alterations, either in the screws of the gun carriages or other matters connected with the guns in Mr. Hamilton's presence?—I have heard him make the remark that he could make improvements in the compressor screws.

You have heard Mr. Sillem say that to Mr. Hamilton?—Yes.

That he could make improvements in the compressor screws?—That he had done so.

What did Mr. Hamilton say upon that?—He thought it was a great improvement upon the old original one.

He said that?—Yes.

LORD CHIEF BARON. In the lock?—No; the compressor screws.

MR. ATTORNEY GENERAL. You told us the small guns were rifled?—Yes.

Do you remember about what time it was that the casting of the guns for the carriages was going on?—It was all going on together.

At the same time that the rifling of the small guns was going forward?—Yes.

As to the rammer and sponges for the guns, were those made in the same shop?—No.

In the pattern shop?—Yes.

That is another place, is it?—Yes.

Were those gun carriages of a common or of an unusual kind?—They were good ones.

Were they of an ordinary description, or were they rather difficult to construct?—Rather difficult, I should say.

Not of a very ordinary or common description?—No.

Do you remember what they were made of?—English elm.

And of what were the slides made?—Teak wood.

Did you happen to know where the teak wood for the slides was obtained?—Yes.

Where?—At Mr. Miller's.

At Mr. Miller's yard?—Yes.

Did you see the gun carriages finished?—No, they were not quite finished when I left.

Had they, or had they not, been nearly finished for some time before you left?—Yes. For how long a time had they been nearly finished?—I should say about three months they had been nearly finished.

Do you remember being employed about a vessel called the *Orato* or *Oreto*?—No, I never was employed on her.

Or upon the guns of that ship?—I cannot tell whether they were for her or not.

However, do you know anything about guns for a ship, or about a ship of that name?—They were supposed to be for her; that is all.

What do you mean by "supposed"?—It was the opinion of the men in the yard.

What are you speaking of?—I could not say they were for her.

Do you mean guns?—Guns, and carriages, and slides.

You know nothing except the talk of men in the yard; is that so?—Yes.

Was there a gentleman of the name of Smith in the employment of your masters as a draughtsman?—Yes.

Do you remember hearing Mr. Sillem say anything to Mr. Smith about the drawing, or about a drawing which he produced of a large carriage for a gun?—Not to Mr. Smith; he did to Mr. Howarth.

Was he a draughtsman?—Yes.

What was it that he said to Mr. Howarth?—It was altered; the carriage was to be raised about eleven inches higher than it formerly was.

Some gun carriage was raised eleven inches higher than it had been?—Yes.

Was it about that that Mr. Sillem spoke to Mr. Howarth?—Yes.

What did he say about it?—He only said that it would have to be altered; he took the drawing away and altered it, and then he wrote again for the drawing; he took the drawing away from the shop and sent it back to us to be according to the new drawing, which was eleven inches higher.

Was it before it was made eleven inches higher or after that there was this conversation between Mr. Sillem and Mr. Howarth; before the gun carriage had been raised eleven inches?—Before.

Mr. Sillem said it would have to be altered and raised?—Yes.

Did I understand you that he said anything about the drawing?—Mr. Howarth took the drawing away.

Mr. Sillem showed Mr. Howarth the drawing?—Yes.

Of the gun carriage as it would be when raised?—Yes; it had to be raised.

Mr. Howarth took the drawing and went away?—Yes.

Did Mr. Sillem tell Mr. Howarth why it was that the gun carriage would have to be raised?—No, I cannot say that he said anything about it.

Did you hear him or not?—I did not hear him say anything about it.

Did you hear the name of any vessel mentioned at the time for which the gun carriage was intended in the conversation between Mr. Sillem and Mr. Howarth?—Not in that conversation; I have not.

Or at any time when Mr. Sillem or any of the other partners were present?—No.

One word more about the gun-carriages which you were making while the machinery for the *Alexandra* was being prepared; were those made from drawings?—Yes.

LORD CHIEF BARON. All gun-carriages are made from drawings, are they not?—Yes; everything is made from drawings there.

MR. ATTORNEY GENERAL. According to the custom of the business in which you are engaged, do drawings for gun-carriages and the like bear the number of the thing that is to be made from them?—Yes; they bear the number of the job.

Of the job, whatever it is?—Yes.

When you had made those gun-carriages from the drawings, did you leave the drawings with your masters?—I left them in the shop; they were there when I left.

MR. ATTORNEY GENERAL (to Sir Hugh Cairns.) Will you produce the drawings of those gun-carriages; you have got the notice to produce them; of the gun-carriages made by the witness at the time when the machinery was in preparation; there were gun-carriages for three guns, a large gun and two small ones.

SIR HUGH CAIRNS. We do not produce anything.

Cross-examined by Mr. KARSLAKE:

Can you tell me when you left?—Three or four months since.

I have a very few questions to ask you about these gentlemen by whom you were employed. They carry on business as engineers and founders on a very large scale, do they not?—Yes.

I believe they have eight hundred or nine hundred workmen employed at a time on their premises?—I dare say, if you take both yards into consideration, there would be more than that.

I believe they make all sorts of machinery?—Yes.

Rice mills, cotton presses, and other things?—Yes; all sorts.

And the hands generally are pretty full of work?—Always very busy since I have been there.

I suppose your work as a joiner was carried on under one particular roof, was it not?—Yes.

And the machinery was put in another place?—Yes.

And was there one place where guns were bored?—They were bored in one place.

And they are constantly boring guns, are they not? It is a part of their business to bore guns?—Yes.

And if you go into the yard, you generally find a quantity of guns which are there ready for sale?—O, any sort you like.

How long had you been in their employment before you left on this occasion?—About a year and eight months.

Now you said that the teak on which you worked came from Messrs. Miller's yard?—Yes.

They are dealers in timber, are they not?—Yes.

Teak is the best wood for making slides, is it not?—I do not know.

It is as good as any?—I suppose it is as good as any.

It is commonly employed for making slides of guns?—I cannot say; I never made any slides before I went there.

That is a very fair answer. English elm is used for the carriages, is it not?—Yes.

I suppose you had never made a carriage before you went there, had you?—Yes, I had.

You have made some there and some before?—I have made many there.

Now you have been asked about this number, as if there was something mysterious in it. All work in your workshops goes by a number, does it not?—Yes; everything goes by a number, according to the job that it is for.

Then you know what it is for by the number?—Yes.

And I suppose whenever you make a gun-carriage there is a drawing for the gun-carriage?—Yes.

That is the usual practice?—Yes.

Re-examined by the SOLICITOR GENERAL:

What jobs were these guns for?

SIR HUGH CAIRNS. I object to that question. There was no cross-examination on that.

The SOLICITOR GENERAL. I understand my friend declines to produce the drawings, although we have called on them to do so.

SIR HUGH CAIRNS. We have no notice to produce, which we answer.

The SOLICITOR GENERAL. The notice to produce has been served on you.

SIR HUGH CAIRNS. We have a notice to produce the gun drawings for the ship *Alexandra*; but that is all.

The SOLICITOR GENERAL. At the time when these guns were being made, were there any other gun-carriages and slides being made?—Not at the same time.

Then do I understand that you do not know what these guns were for?

Mr. KARSLAKE. I object to that. We have not asked him a word about it.

SIR HUGH CAIRNS. It was not cross-examined upon.

Mr. BENJAMIN HODGSON sworn and examined by the SOLICITOR GENERAL:

Are you a warehouseman?—Yes.

Where are you employed now?—In the Wapping Dock warehouse at Liverpool.

Were you for any length of time in the service of Fawcett, Preston & Co.?—About a year and eight months.

In what department of their works were you?—When I first was there I was put in the yard as a laborer, and after I had been there a short time I was put in the packing room.

Were you in the packing room in the earlier part of this year?—Yes.

And some time before?—Yes.

When did you leave the service of Fawcett, Preston, and Company?—About the same week as Carter left.

Some time before you left, were Fawcett and Company making any machinery for any particular ships?—Yes.

What ships?—The *Alexandra* and the *Phantom*.

Were they making guns?

SIR HUGH CAIRNS. Were you engaged about the machinery?—No; but it all had to come to the packing room before it went out of the yard, or was sent there.

The SOLICITOR GENERAL. Besides machinery, were they making guns?—Yes.

And gun carriages?—Yes.

And shot?—Shot.

And shell?—Yes.

Do you know for what vessel they were made?

SIR HUGH CAIRNS. I object to that. It does not appear that they were made for any vessel at all.

The SOLICITOR GENERAL. Do you know for what purpose?

Mr. MELLISH. Did you hear from the defendants for what purpose?—ought to be the question. How could he know for what purpose?

LORD CHIEF BARON POLLOCK. All he ought to answer is, "I do know." Then whether he knows it from any source is for further consideration.

Do you or not know for what purpose those things were made?

SIR HUGH CAIRNS. Do not answer as to vessels, but simply say yes or no. Do you know it?

LORD CHIEF BARON POLLOCK. Do you know the fact?—No. You were speaking about shot and shell. I don't know what they were for.

The SOLICITOR GENERAL. No; I am speaking about guns and gun carriages.—The guns and gun carriages were supposed to be for the Alexandra.

What ground have you for that belief?

SIR HUGH CAIRNS. No, no, that will not do; he says they were supposed to be; not that he believed anything.

The SOLICITOR GENERAL. I will put the question in another way.

LORD CHIEF BARON POLLOCK. In stating his grounds for that belief, he may state so many things that are not evidence that it would be very dangerous to admit his answer. "Do you know it?" should be the first question.

Mr. MELLISH. Unless he was told by the defendant, how could he know it?

The SOLICITOR GENERAL. We will put the question in a different way.

SIR HUGH CAIRNS. Do not let him answer the question until we hear it.

The SOLICITOR GENERAL. Was it your duty to go where the work was about to be packed; was it your duty to go to the shops to see how far it was advanced?—I was sent over; either I or Mr. Bradshaw went.

Who was in the habit of sending you over for that purpose?—Mr. Bradshaw, who is in the packing room along with me.

He was employed with you?—Yes; he was employed in the packing room.

You said you or Mr. Bradshaw went, or were sent over?—Yes.

Who sent you over?—Mr. Bradshaw would send me or go himself.

When you were sent, were you directed as to what you were to inquire for?—For such a number—2,209.

You were to inquire for 2,209?—Yes.

For what things were you to inquire identified by that number?—Everything belonging to the machinery.

Were you to inquire for any guns as identified by that number?

SIR HUGH CAIRNS. No, no, really that will not do; what a complex question.

The SOLICITOR GENERAL. Were you ever sent to inquire for guns?—No.

Were you ever sent to inquire for gun carriages?—No.

SIR HUGH CAIRNS. Do not answer so quickly. My friend must not put his questions so rapidly. We have no time to object to them.

LORD CHIEF BARON POLLOCK. Your interposition, so far, is too late, but it turns out to be unnecessary, for the witness says, I never was sent for guns or gun carriages.

SIR HUGH CAIRNS. I beg my friend to put his questions a little slower, and let us have an opportunity of objecting to them if there be any necessity to do so. There is no objection to the answer, as it happens.

The SOLICITOR GENERAL. Were you sent for machinery for that number?—Yes.

And for clenches and bolts?—Yes.

You had to pack them?—I took them up myself.

Did you take them to the ship?—Yes.

And you know that they were for that ship by that number?—Yes.

Did you ever hear that ship spoken of by any one of the partner in the office?—No; not by any one in the office.

Did you ever hear any one else speak of it?—I heard Mr. Speers say——

SIR HUGH CAIRNS. No, no; that will not do.

The SOLICITOR GENERAL. What is Mr. Speers?—He is the manager.

The manager of Fawcett, Preston and Company's business?—Yes.

What did you hear of him?

SIR HUGH CAIRNS. I object to that. Just let us hear the question.

The SOLICITOR GENERAL. Did Speers give you any orders for any of those things?

LORD CHIEF BARON. The better way is to turn your attention from the witness, and direct your question to me when it is objected to.

The SOLICITOR GENERAL. My question is this, my lord: Did Mr. Speers, who is stated to be the manager or foreman of Fawcett, Preston & Co.'s works, give the witness any orders with respect to those things?

SIR HUGH CAIRNS. What things?

The SOLICITOR GENERAL. Machinery, clenches, and bolts.

SIR HUGH CAIRNS. I have no objection to the question, then, if that is all.

The SOLICITOR GENERAL. Did he give you any orders?—Yes.

What were the orders?—To see if the things were ready, and to take them if they were ready, as the men were waiting for them in the yard.

To take them where?—To take them up to Mr. Miller's yard, or to the boat.

Or to where?—To the gun-boat.

Those were the words of Mr. Speers?—As far as I remember.

SIR HUGH CAIRNS. As far as you recollect?—Yes.

The SOLICITOR GENERAL. Where did you take them in consequence of that order?—I took them to the yard, and left them in the stores of Miller's yard.

What became of them afterward?—The men would be waiting to use them when I got there.

What ship was it?—The ship now called the Alexandra.

Was the Alexandra in the stores at that time?—Yes.

You saw the things in consequence of that order taken to the Alexandra?—Yes; the men have been waiting for them, and when I have taken them they have said, "Are those for the gun-boats?" and I have said "Yes."

The men were waiting for them?—Yes.

SIR HUGH CAIRNS. Never mind what men were waiting for them.

The SOLICITOR GENERAL. He said, "Are those for the gun-boat?"—Yes.

And you said "Yes"?—Yes.

SIR HUGH CAIRNS. I object to that being taken as his answer.

The SOLICITOR GENERAL. Never mind; he has given the answer.

You were often in the packing-room, I suppose?—Yes.

Do you know a person of the name of Hamilton?—Yes.

Did you ever see him there?—Yes.

Who was he with?—Sometimes alone, and sometimes with Mr. Sillem, and sometimes with Mr. Mann, but he was more often with Mr. Mann.

Were any of the other members of the firm with him?—Yes.

Mr. Willink?—Yes.

What did he come about?

SIR HUGH CAIRNS. No, that is not the proper question. What did he say or do?

The SOLICITOR GENERAL. Do you recollect anything he said in their presence in the packing room?—No.

Do you remember anything he ever did in their presence?—No, except examining the shot and shell.

Did he talk to them about it?—Mr. Sillem and Mr. Hamilton were talking about it. I could not understand what they said.

You did not hear what they said; they were talking, and they examined the shot and shell?—Yes.

Did their conversation stop when you came near them?—No; I did not notice them stop their conversation.

Have you ever seen Mr. Hamilton at Miller's yard?—I met him coming along the yard.

Do you recollect anything Mr. Sillem ever said to Mr. Hamilton; when he spoke to him what did he call him?—I never heard him say anything.

Do you recollect anything being said about the clench rings that were being made for this ship; did Mr. Hamilton speak to any of the partners or to Mr. Speers?—Mr. Hamilton has been down to Fawcett, Preston & Co.'s premises, and as soon as he has gone away there has been an order to get these things ready.

SIR HUGH CAIRNS. Listen to the question. Did you ever hear Mr. Hamilton say anything to the partners on the subject of the clenches?—No.

The SOLICITOR GENERAL. Were any orders given after Mr. Hamilton came to the yard concerning these clenches?—Yes.

The LORD CHIEF BARON. By whom?

The SOLICITOR GENERAL. By any one of the partners?—Yes; to get these up to the boat. They were in a very great hurry for these clenches and bolts at that time.

Do you recollect when these orders were given?

SIR HUGH CAIRNS. Was this by Sillem or by whom?—The manager.

Mr. Speers?—Yes.

The SOLICITOR GENERAL. Do you recollect in what terms the orders were given?—To see for bolts and clenches, and take what was ready to the yard at once.

Were those orders given immediately after a visit from Hamilton?—Yes; on one or two occasions.

As soon as he had gone?—Yes.

Did you take the clenches and bolts yourself?—Yes; I did.

In consequence of that order?—I suppose so.

Do you recollect packing any of the guns that were made at that time?—No; not the large ones. I packed the small ones.

How many guns were there for that job?—Intended for the boat, three.

SIR HUGH CAIRNS. Really my friend ought not to put such questions. I object to

my friend putting his question in that way, "*for that job.*" We have not heard that there were any guns for any job yet.

The SOLICITOR GENERAL. You say you packed the two smaller guns; was that at the same time the machinery was being made for this boat?—Yes.

Do you know what was done with them?—They were sent down to the northwestern railway station.

Which station?—At Wapping.

In Liverpool?—Yes.

Were the carriages packed as well as the guns?—Yes.

Were there a good many carriages?—Yes.

How many?—Sixteen or seventeen.

Did you ever hear any one of the partners of the firm, or Mr. Speers say for what ship those guns were intended?—No.

LORD CHIEF BARON POLLOCK. I do not think that Speers would do, except in the giving of some actual direction.

The SOLICITOR GENERAL. My intention was to refer to what he said in giving orders as manager. However, the witness says no.

Is it within your knowledge how those packages were addressed?—They were marked O. A. and C. B. with a diamond, and numbered.

To whom were they addressed?—To Captain Blakely, Camden, London.

Did you see the delivery note?—A. Yes, I did.

In whose hands did you see it?—Sinclair's.

The SOLICITOR GENERAL. We have given notice to produce.

SIR HUGH CAIRNS. That will not do.

The SOLICITOR GENERAL. We have given notice to produce, and we shall produce evidence.

SIR HUGH CAIRNS. What I object to is the witness giving evidence of the delivery note.

The ATTORNEY GENERAL. He must give such a description as will identify it; otherwise we cannot call for its production.

You saw the delivery note?—Yes.

The ATTORNEY GENERAL. We call for that.

LORD CHIEF BARON POLLOCK. What delivery note are you speaking of?—The delivery note is left at the goods station, and signed to say that they have received the goods.

Signed at the station?—Yes, my lord.

Who sent them to be signed?—Mr. Bradshaw.

Who is Mr. Bradshaw?—The manager.

Is he the manager of the defendants?—In the packing room.

Mr. KARSLAKE. He is proved to be the packer, under whom this man acted.

The SOLICITOR GENERAL. He is the manager in the packing room. We call for that delivery note. We have given notice to produce it, and I suppose therefore it will be produced.

The LORD CHIEF BARON. Is there an admission of the notice to produce?

The ATTORNEY GENERAL. It is not disputed.

The SOLICITOR GENERAL. The notice will not be disputed. This does not refer to the Alexandra in particular.

The LORD CHIEF BARON. Sir Hugh Cairns, do you admit the notice to produce?—Yes.

The SOLICITOR GENERAL. You saw a document which you called a delivery note?—Yes.

Where did you see it?—In Sinclair's hands.

Who is Sinclair?—The shipper; the man who goes out with the goods.

Is he a man carrying on business at Liverpool?—No; he is employed at Fawcett, Preston & Co.'s as a laborer, and any goods which have to go out he takes them, or goes along with them; if he requires any men to assist him, he takes them also.

He takes them from your premises up to the railway station?—From Fawcett, Preston and Company's.

Where did you see this document in Sinclair's possession?—At the Wapping Station. He was showing it to the man who takes the goods.

Is that the last time you saw it?—Yes.

When he was at the station delivering the goods at the station?—Yes.

You saw no more of it?—No.

Is it usual, to your knowledge, for delivery notes of that description to be made in duplicate?—Yes.

Is it usual for one part to be filled in?—Yes.

At the office of Fawcett and Company?—Yes.

Is the other part kept by the railway company?—Yes; or they destroy it."

Did you ever hear any partner in the firm speaking of Mr. Hamilton, and saying

what or who he was?—I never heard of any partner saying what Mr. Hamilton was. I heard one of the clerks.

In the presence of the partners?—No.

Did you hear him speaking to the clerk in the presence of any of the partners?—No.

According to the course of business, is it generally stated and made known in the office for whom an order is given? Is that the usual course of business?

SIR HUGH CAIRNS. Is it the course of business to state and make known? Is that a proper question?

The SOLICITOR GENERAL. It is a perfectly legitimate question, whether the usual course of the business is that when orders are given to be executed, the name of the person for whom the order is to be executed is stated.

SIR HUGH CAIRNS. I object to that question. My friend must explain his question.

The LORD CHIEF BARON. I do not quite see the point of the question.

The SOLICITOR GENERAL. The point could only appear if I put that question, and followed it up by the next; but the question, I apprehend, is perfectly legitimate in itself. The question is whether, according to the usual course of business in the office, it is customary to give the names of the persons for whom the order is to be executed.

The LORD CHIEF BARON. To give it out in public?

The SOLICITOR GENERAL. To the workmen and persons employed in the office. Whether it is the usual course of business in Fawcett, Preston and Company's office to do so.

The LORD CHIEF BARON. Do you mean that the workmen were told the contents of the written order?

The SOLICITOR GENERAL. No; only I wish to ask whether it was the usual course of business to identify the orders when given out by mentioning the persons for whom they were to be executed.

The LORD CHIEF BARON. Do you mean the workmen who were to execute them?

The SOLICITOR GENERAL. No; my question is, whether the workmen were informed, when the order was given to them, who the persons were for whom the goods were to be made, so as to identify the order.

The LORD CHIEF BARON. That is a question you may put, certainly.

SIR HUGH CAIRNS. The objection that I take to the question is this. This gentleman is employed in a packing room. That is the only business that he has. He is employed, when the goods are completely finished, to take them or send them to the railway for their destination, which is the working of Fawcett, Preston and Company, which we are told are premises where nine hundred men on an average are employed.

The LORD CHIEF BARON. Sir Hugh Cairns, it is no objection to a question and the answer that it is altogether incredible.

SIR HUGH CAIRNS. No doubt.

The LORD CHIEF BARON. Because I cannot imagine that any person acquainted with business would suppose that the workmen in a great establishment like the one described would know for whom they are doing the work. There can be no objection to the question.

SIR HUGH CAIRNS. Well, I will say nothing further upon it, my lord.

The SOLICITOR GENERAL. The answer may be of little value, or not; but I should like to have an answer to it, whether it was usual for the names of the persons for whom orders were to be executed to be mentioned?—Sometimes, either by a number or a name.

The LORD CHIEF BARON. I can understand why a number should be given out, because it is to associate one part of the work with the other; therefore, that one can very well understand.

You would always know the number from the drawing or something else?—Yes.

The LORD CHIEF BARON. There is no occasion to give a number, then.

The SOLICITOR GENERAL. In this case was any name given?—No.

SIR HUGH CAIRNS. No, no; my friend must ask, was this workman there when it was given out?

The SOLICITOR GENERAL. I speak of that which comes within this particular witness's knowledge; but as he has said no to the question already, that relieves us from your objection.

You have already said, with respect to the machinery of the bolts and the clenches, that a number was given?—A number?

Yes?—No, only the quality.

I am not sure you understand my question. Did you not state, with respect to the machinery, which to your knowledge was taken on board the Alexandra, and the clenches and the bolts, that they were made by a particular number?—Yes.

What was the number?—Two thousand two hundred and nine.

Did you ever see Mr. Hamilton inspecting that machinery while it was being made?—Yes; I have seen him inspecting it.

Do you remember the night before the Alexandra was seized?—Yes.

Were any orders given by Mr. Speers that night for sending anything on board her?—Yes; nothing more was to be done.

Was that after the seizure?—Yes.

Do you recollect any orders given before which were countermanded by that order? Were any orders given before the seizure to take anything down to the ship?—They came down from the workshops to the packing-room.

What were they?—Eccentric pump-buckets and bright work.

Those were to have been put on board, but were stopped?—No; they were in the packing-room, and were to go down in the morning, when she was seized.

Do you recollect anything being done for a ship called the Oreto, previously?—I imagine; but I cannot say anything about that, because I was not in the packing-room at that time.

Do you remember the time that it was talked about?—Yes.

At that time were you sent to carry letters?—Yes.

To what firm?—To firms all over Liverpool.

Among others, did you carry any from Fawcett and Company to a firm named Fraser, Trenholm and Company?—Several.

Was the communication frequent between those two firms?—Yes.

And you often had to carry those letters?—Yes, very often.

Do you recollect the time when the Oreto sailed?—Yes.

Do you recollect being sent out with any notes the evening before?—Yes.

Were there two notes?—Yes.

Where were they sent?—One to Fraser, Trenholm & Company, and the other to the Dock Company at the quay.

Did you hear either of those notes read by either of the persons to whom they were delivered?—Yes, at the Dock Company's office, I did.

What did you hear?

SIR HUGH CAIRNS. I object to that question.

The LORD CHIEF BARON. What note was it?

The WITNESS. It was a note to the Dock Company's office, stating—

SIR HUGH CAIRNS. Never mind what it stated.

The SOLICITOR GENERAL. Did the Oreto sail the next day?—I believe she did.

You were not present at her sailing, were you?—No, I was not present; I was in the yard.

You did not see her go?—Yes, I did; but I did not see her start.

Did you see whether any members of the firm of Fawcett & Company were on board of her?—No; I was not there when they started.

Cross-examined by Sir HUGH CAIRNS:

Just tell me exactly your business in the warehouse of Fawcett, Preston and Company; you say you were in the packing-room?—Yes.

Employed as a laborer there?—Yes; at first.

And what were you employed at afterward?—In the packing-room, to assist Mr. Bradshaw.

You were first employed as laborer in the yard?—Yes.

And then as laborer to help packing?—To take Mr. Bradshaw's place when he was not there.

You were assistant packer?—Yes.

Was it your business to be in the machinery room; in the place where the machinery was made?—Yes; if we were waiting for it we went to the machinery room, if they did not send it down to us.

But, excepting for the purpose of waiting for it to pack it, you had nothing to do at the place where the machinery was made?—Anything that was required we should ask for.

Had you anything to say except to wait for it?—Yes; we had to ask how long it would be before it was ready.

The LORD CHIEF BARON. Then you waited for it?—Yes, sometimes, if it would not be long; sometimes we would go away and come back again.

SIR HUGH CAIRNS. If it was ready you waited and got it, and if it was not ready you went away and came back?—Yes.

When did you leave Fawcett, Preston and Company's service?—A. I am sure I forgot the date.

Tell me about the date?—Some time in April, I think; at the same time Carter left; it was in the same week. He left on the Saturday, and I left on the Wednesday or the Thursday.

Was that after the vessel was seized?—Yes.

You were discharged, were you not?—Yes.

What for?—Being absent for a day.

What led to your being absent?—I missed the breakfast time, and I was not there in time for the bell, and I stopped away all day then.

You were discharged for drunkenness, were you not?—No; I was not discharged for drunkenness. They said I was drunk, and I said I was not. Speers says to me, "Where were you yesterday?" I said, "I was ill;" and he said, "We heard you were drunk, and, therefore, put on your coat," and nothing more passed.

That was the reason assigned for your discharge?—Yes.

But it was not true?—No; I was not drunk.

Captain EDWARD AUGUSTUS INGLESFIELD, called and sworn, and examined by the ATTORNEY GENERAL:

Are you the commander of her Majesty's ship *Majestic*?—I am captain.

Is that ship stationed at Liverpool?—She is.

Have you, assisted by the carpenter of your ship, examined the *Alexandra*, lying in the Toxteth dock?—I have.

Since the time of the seizure, I believe?—Yes.

Did you carefully examine her fittings, as far as they have gone?—I did.

Are you able to describe to the jury the character of the vessel, as to her timber and construction generally?—I can.

Of what timber is she built?—Principally of teak; her upper works are of other material; the kind of wood I cannot exactly say, but I should call her a strongly-built vessel, certainly not intended for mercantile purposes, but might be used; and is easily convertible into a man-of-war.

And speaking of the strength of the vessel, is she in your judgment of such strength as would be adapted to her being used as a man-of-war?—She is.

Did you find whether she had an accommodation for men and officers, such as would have to serve on board a man-of-war?—She has.

And as regards stowage room and the building of the vessel, what say you to that?—As regards stowage room, she has only stowage room sufficient for the crew, considering the berthing of the crew to be for thirty-two men.

And as regards her build generally, is it your opinion that she is adapted for a man-of-war?—She is quite capable of being converted into a man-of-war without having, at the time I saw her, any appearance of fittings for guns.

You say that there were no guns or immediate preparation for guns?—There were none.

But having regard to the building of the vessel, might she or not in your opinion be fitted for guns?

The LORD CHIEF BARON. He has said that already—that she is. He said that she might be used as a yacht, and easily converted into a vessel of war.

The ATTORNEY GENERAL. I wish particularly to call his attention to her fittings to receive guns.

The LORD CHIEF BARON. He has already said she is easily to be converted into a man-of-war.

The ATTORNEY GENERAL. Including her adaptation to receive guns?—She is of sufficient length to receive guns, but without any of those appurtenances which would indicate that guns were about to be put on board.

Would you tell us to what you refer, Captain Inglesfield, in speaking of the appurtenances which indicate an absolute intention of putting guns on board?—Ring bolts at the side and plates on the decks upon which pivot guns would turn.

SIR HUGH CAIRNS. There were none of those.

The ATTORNEY GENERAL. No; he says there were none, and I ask him what were the appurtenances.

Would there be any difficulty in your judgment in adding to the ship as she is now those preparations for guns?—No difficulty.

The LORD CHIEF BARON. Not only no difficulty, but it could be easily done?—Easily converted into a man-of-war.

The ATTORNEY GENERAL. When you speak of a pivot on the deck, do you speak of three guns or of several guns?—She might have two or three pivot guns.

Would she, according to the ordinary arrangement now-a-days of men-of-war of her size, probably carry two or three guns or more on pivot?—Probably three guns.

Would those, according to the ordinary course in these matters, be guns varying in size, or guns of the same size?—Of varying size.

Supposing there were guns according to the ordinary course in such arrangements, would the smaller guns or the greater predominate in number?—I could only tell what guns would be fitted to the vessel by knowing what size was intended to be put on board. If they were smaller guns they must have ports; but if guns of certain dimensions, they would be pivot guns, and would fire over the bulwarks.

Without ports?—Without ports.

I suppose if it were intended that they should fire over the bulwarks, the bulwarks would be constructed comparatively low, would they not?—Yes; they would.

How did you find the bulwarks in this ship?—Low, but not similar to the bulwarks of gunboats in our service.

Over which they were to be fired?—Of certain dimensions.

The LORD CHIEF BARON. Those were low, but not low enough, according to our service, was, I think, your answer?—Not the same description as those in our service. They would be flying bulwarks.

But would there be any difficulty, without proper gun carriages, in firing guns over those bulwarks?—It would be entirely dependent on the size of the gun.

But with a proper adaptation of the size of the guns it might be done?—Certainly.

About what height, so far as you recollect, of gun carriage, would be required to enable the gunners to fire over those bulwarks?—The gun carriage and slides in different kinds of guns vary very much in size, therefore I must know the kind of gun to be able to judge of the height or size of the carriage.

It would depend on the kind of the gun?—Yes.

But with certain kinds of guns it might be done?—Perfectly.

Cross-examined by SIR HUGH CAIRNS:

On what calculation do you arrive at the conclusion that this vessel would have accommodation for thirty-two in the crew? Is that upon the usual navy allowance of room?—Yes. The length of her in the lower decks was thirty feet by fifteen, giving nine inches for each man; that would stow thirty-two men.

You only give nine inches for each man in the navy?—Nine inches only.

That is rather close quarters, is it not?—Yes, rather.

You say that the vessel was fitted for a yacht, and is easily convertible to a vessel of war. She could be used, I suppose, for mercantile purposes, not merely for a yacht, but she was capable of being used for mercantile purposes?—No, she was not capable of being used for mercantile purposes, because she had no stowage for merchandise.

What state were her cabins in when you saw her?—They were not finished, but they were all laid out and bulkheaded off. Besides the accommodation for men, there were cabins for five officers, a captain's cabin, and a mess-place.

Were the cabins fitted up, or did you merely see the partitions between them?—They were partly fitted up; sufficiently to distinguish them as cabins.

What was the difference between the cabins you saw and the sort of cabins that might be found in a yacht, supposing she was to be used for that purpose?—No difference.

Mr. NEIL BLACK was called and sworn, and examined by Mr. LOCKE:

You live at 18 Neptune street, Liverpool?—Yes.

You are a ship-carpenter?—Yes.

How long have you been engaged in ship-building?—From twenty to thirty years.

Have you been engaged in vessels intended for war purposes?—Sometimes.

When was it that you saw the vessel Alexandra?—On the 21st March last.

Where was she?—Lying across the Tontoth dock, Liverpool.

Did you go on board of her?—Yes.

Did you examine her carefully?—Not particularly.

What did you do; did you take her measurement?—I looked at her upper works, and a gentleman came and ordered me ashore. I afterward learned he was a builder.

The LORD CHIEF BARON. Did you know that at the time?—Yes; I was looking at the vessel when a gentleman came aboard and ordered me ashore.

Did you afterward see him?—Yes.

Do you know who he is now?—Yes, my lord.

Well, who was he?—Mr. Miller.

Mr. LOCKE. What did he say to you?

The LORD CHIEF BARON. This is nothing to what he said.

Mr. LOCKE. He ordered you away?—Yes.

Did you go there again?—Yes.

By whose directions?—By Mr. Squarey's.

Who is he?—I believe he is a lawyer in Liverpool.

Were you interfered with on this second occasion when you went?—I was.

By whom?—By Mr. Miller.

He came again?—Yes.

Was Mr. Squarey there?—No.

Did he turn you out of the vessel again?—No.

How was it he did not?—Because I would not go for him.

And Mr. Miller remained there?—He looked in my face and told me my face indicated I was a spy.

What did you say to that?—I told him that I was there—

The LORD CHIEF BARON. This is not evidence against the defendant. He was an agent of theirs, to make conditions, or do anything.

Mr. LOCKE. But here is Mr. Miller exercising ownership over this vessel.

The LORD CHIEF BARON. That is of no use.

Mr. LOCKE. When was it Mr. Miller allowed you to measure the ship?—I did not ask permission to measure her.

You did measure her?—Yes, I did.

What was her length?—About one hundred and twenty-seven feet.

Have you your measurements with you?—No.

What breadth was she?—About twenty-one and a half feet, as well as I can recollect.

Across the beams?—Yes.

And how many tons?—About two hundred and forty or two hundred and fifty, builders' measurement.

Was she strongly built?—Yes.

Of what wood?—Her frame was of British oak, and her planking, so far as I could see, was of teak.

Is it thick?—Her frame is not extraordinarily strong, but the planking, both outside and inside, is stronger than is usual for vessels of that class to be classed at Lloyd's.

How far apart were her beams?—Well, they averaged about two feet apart; some were more and some were less.

Of what length?—The beams?

Yes.—The extreme beam of the ship was twenty-one and a half feet.

Did you observe her hatchways?—Yes.

What was the width of the hatchways?—They were not wider than from two feet to two and a half feet.

Did you ever see a merchant vessel with a hatchway only two feet or two and a half feet wide?—No.

Could a vessel with a hatchway of that width be used as a merchant vessel?—Not generally; not for bale goods, or anything of that kind.

You could not get the goods into her?—No.

What could she do as a merchant vessel?—She might put in small packages of hardware.

They could not get the ordinary merchandise put into a merchant vessel into such hatchways?—No.

What is the ordinary width of the hatchway of a merchant vessel?—It would be of various sizes; from five to six or seven feet wide. There is no particular size.

But you never heard of a merchant vessel with a hatchway of two feet or two and a half feet in width only?—No.

What are its beams made of?—British oak; for the boiler space they are made of iron.

Did you examine the bulwarks?—Yes.

Did anything strike you with regard to the bulwarks; were they the bulwarks of a merchant vessel?—No.

For what reason were they not?—From their extraordinary strength.

Did you mark anything with respect to their height?—Their height is about two and a half feet.

Is that high or low?—It might do with regard to height for a merchant vessel, but it is generally higher for a merchant vessel.

But you say that the bulwarks were stronger than are used in a merchant vessel?—Yes.

And likewise lower?—Yes.

Now what are the upper decks made of?—Pitched pine.

Have you ever seen pitched pine used for the decks of any vessel except vessels of war?—No.

You never have?—No, except they are between decks.

Do you consider this vessel altogether unadapted to mercantile purposes?—It is not qualified for mercantile purposes.

In your opinion, having examined her—in your experience, what do you consider that she must have been built for?

The LORD CHIEF BARON. That is not quite the form of question that should be put; for what is she adapted would do better.

MR. LOCKE. For what is she adapted?—She is adapted for war purposes.

What is her appearance?—A very fine appearance. She looks a handsome piece of architecture; very fine lines, capable of great speed, according to the power of machinery.

What kind of war vessel should you say she has been built for?

SIR HUGH CAIRNS. He says she is "adapted for," not "built for." For a gunboat.

Cross-examined by Mr. MELLISH:

Do they use pitch pine for the decks of war vessels? I understand you to say that pitch pine is not usually used for the decks of merchant vessels; is it used for the decks of war vessels?—I never saw it used for the decks of merchant vessels.

Did you ever see it used for war vessels?—Yes.

Is it usual to use it for the decks of war vessels?—Sometimes; but not often.

But not often; in fact it is not usual to use them for decks at all, is it? You say you first saw the *Alexandra* on the 21st March?—Yes.

Who told you to go on board?—A gentleman I was working for.

Who was he?—Captain Knight, of the ship *The New World*.

Is that an American ship?—Yes.

A New York ship?—Yes.

I thought you told me he told you to go on board?—He asked me if I had seen the ship, and I said no; then he asked me if I would go and look at her, and give him my opinion; I did so.

Then were you taken to the American consul?—I went there.

What orders did they give you there?—None whatever with regard to the *Alexandra*, further than to ask my opinion.

Did they say anything about payment?—No.

Nothing?—Nothing.

They simply wanted your opinion about the *Alexandra*?—Yes.

Now, did you apply for the order to see the *Alexandra*?—I did.

To whom?—To Mr. Squarey.

He is the solicitor for the American consul?—I am not aware.

But you applied to Mr. Squarey, the solicitor, for an order to see the *Alexandra*?—Yes.

How came you to apply to him? He is the gentleman sitting there, before my friend Mr. Locke?—Yes.

How came you to apply to him?—I wanted to see her.

Who told you to go to him?—No person.

Why did you go to him more than to any other man in Liverpool? Did you go to any other solicitor in Liverpool besides him to see which was the proper man to give you an order?—No.

It was by accident you went to Mr. Squarey?—No, not by accident.

Why did you go to Mr. Squarey?—Because I knew he had the power to give an order.

Who told you so?—He told me so himself.

Then he met you?—Yes.

Do you mean he gave you a written order?—No; he went along with me.

Then you came to Miller's yard?—No, I did not.

Where was the vessel at that time?—Toxteth dock.

Which way did you get on board?—I walked on board.

Without asking permission?—I asked the custom-house officer.

She was not seized then?—She was.

I am speaking when you went and looked, on the 21st of March.—I walked on board then.

Was that in the dock?—In the dock.

Mr. Miller came and said you looked like a spy?—Not then.

That was subsequently?—Yes.

Mr. JOHN WILSON GREEN was then called, but did not answer.

The QUEEN'S ADVOCATE. We will have this witness called in court, and out of court, and then I shall request the clerk to call him upon his subpoena.

The witness not answering, was then called three times upon his subpoena, and did not answer.

Mr. JOHN DA COSTA sworn and examined by the QUEEN'S ADVOCATE:

What are you by profession?—A shipping agent, a ship-owner, and a steamboat owner.

Do you know the firm of Messrs. Miller & Sons?—I do.

Do you know the man who superintends Miller's yard?—Yes.

When did you first know Mr. Miller, senior?—Not until we were contracting for the building of the boat *Emperor*. That would be in February or March, 1862.

Had you some business with them about building a tug-boat?—Yes.

I believe you were a partner in the company for which that tug-boat was to be built?—Yes.

Did you go to Mr. Miller's yard at that time about your boat?—In February, 1862, I went there.

Did you go with a Mr. Corkhill?—I did.

When you got there what did you do with Mr. Miller? I do not ask you what he said?—Mr. Thomas Miller—it was the son of Mr. Miller I saw.

What did you do with him?—He took me and Mr. Corkhill on board the *Oreto*, and there pointed out the vessel.

Did he say something about that vessel? I do not ask you what.—He did.

The LORD CHIEF BARON. What has he to do with the *Oreto*?

The QUEEN'S ADVOCATE. This is a fact; I asked him whether he did not see the Oreto.

The LORD CHIEF BARON. There are a great many vessels in the world which I have no doubt he saw.

The QUEEN'S ADVOCATE. We shall prove something about the Oreto presently. Did you go to Mr. Miller's yard in 1862?—I did.

Do you remember the vessel called the Emperor being launched?—I was not there at the launch. I have been several times there before she was launched.

Do you remember seeing her in Messrs. Miller's yard?—Yes.

Tell me what month in the year that was.—The first trial trip I do not remember, but the second one was on the 3d of March in this year.

But do you remember the first trial trip?—I do, but I could not say rightly what month it was in.

I will not take you to that time, but do you remember being with Mr. Miller a short time before the Emperor was launched on a particular occasion?—Mr. Miller, senior?

Yes; can you remember that?—Yes.

Can you say how long that was before the Emperor was launched?—About a week, the last time.

And in what month?—The vessel was launched on the 8th January in this present year, and it was, I think, New Year's Day that I saw Mr. Miller.

At that time did you see the Alexandra in Mr. Miller's yard?—I saw that gunboat.

The QUEEN'S ADVOCATE. When you saw the Emperor in Mr. Miller's yard, was there any other vessel alongside of her?—There was one at each side.

What were they?—One is a vessel that has sailed since, called the Phantom, a vessel that has gone to Nassau; the other was a vessel for some coast of Africa trade, for a merchant in Liverpool, a coast of Africa firm in Liverpool, whose name I do not know.

Did you ever see the Alexandra in Mr. Miller's yard?—I did.

How long was it before the Emperor was launched that you saw her there?—From September, when they laid the blocks for her, for this gunboat.

SIR HUGH CAIRNS. Do not call her a gunboat.—I do not know her by anything but a gunboat.

The QUEEN'S ADVOCATE. Do you remember the Emperor having a trial trip?—I do.

Did you go to see that trial trip?—Yes.

But did you see the boat that is called the Alexandra?—I did.

You saw the boat that is called the Alexandra in Mr. Miller's yard? Just attend to me, I am going to ask you a question. You will not answer it before you have permission. I am going to put this question, my lord, in order to raise formally the question which I believe your lordship may be said to have practically decided.

The LORD CHIEF BARON. I will copy it down.

The QUEEN'S ADVOCATE. If you please, my lord, the question is this: Did Mr. Miller, sr., on that occasion say anything to you as to the character of the Alexandra, and as to what she was destined for?

The LORD CHIEF BARON. Is it after the Alexandra was finished?

The ATTORNEY GENERAL. While she was in course of completion.

The QUEEN'S ADVOCATE. While she was in course of construction, my lord. I leave out that about the character, because it perplexes the matter.

The LORD CHIEF BARON. Will you begin again?

The QUEEN'S ADVOCATE. Did Mr. Miller, senior, say anything to you on that occasion as to what the Alexandra was intended for?

SIR HUGH CAIRNS. Was intended for?

The QUEEN'S ADVOCATE. Yes, intended for? The attorney general thinks the other has been already rejected.

SIR HUGH CAIRNS. Now, my lord, I suppose in strict regularity we should have an answer yes, or no, first.

The LORD CHIEF BARON. What Mr. Miller said it was intended for would be no evidence.

The ATTORNEY GENERAL. I understand your lordship to have ruled that, but it is put as a matter of form; it is a different question.

The LORD CHIEF BARON. I do not understand that the witness had anything to do with the vessel. It seems to me that a communication, which might have been made in a stage coach, or a railway, or anywhere else, would be, I was going to say, very good evidence; but it would be evidence perhaps not very good, but certainly evidence against Miller. I do not at all see how it is made evidence against the defendants.

The ATTORNEY GENERAL. We could only put it on the ground upon which I ventured to put the former question.

The LORD CHIEF BARON. Mr. Miller was employed. It is just like the case of the housebreaker's shoes. A man is employed to make the shoes, but he is not employed to tell all the world what they are made for, and *non constat*, that that is true. The charge against the defendants is a crime, and what one man says about another man's

crime may be very good evidence against himself that he participated in it, but it is not evidence against the other man.

The ATTORNEY GENERAL. Your lordship will not forget that this is a proceeding *in rem*.

The LORD CHIEF BARON. For this purpose I cannot understand what is the difference.

The ATTORNEY GENERAL. That will perhaps be a matter for your lordship's consideration.

The LORD CHIEF BARON. If you imagine that there is anything in that point I shall be very glad to consider it. It being a proceeding *in rem* makes the decision binding as to the thing itself, and conclusive, but it does not appear to me to alter the character of the evidence admissible in order to bring home guilt to the particular party accused; otherwise you know, because it is a proceeding *in rem*, what anybody says about him would be evidence.

The ATTORNEY GENERAL. My lord, it so happens, and we make no reflection upon Messrs. Fawcett, Preston & Company in that respect; their statement must be taken, as I said before, to be true; that is, that they were the owners at the time of the seizure.

The LORD CHIEF BARON. But I think the fair inference—and it will be for the court to come to the conclusion which shall decide whether the evidence is admissible or not—in my opinion there is no presumption that Mr. Miller was the actual owner, so as to make it evidence; and I am inclined to think that if he was, that would not affect the matter in the hands of anybody else; as, for instance, if a man being clearly in possession of a watch, says, "I stole it," that is very good evidence against him; but if another person gets possession, and you identify the watch, it is not evidence against the man who is now found in possession of it, after the watch is taken, that the man who had it before said it was stolen, and that he stole it. Unless one is to introduce into this proceeding rules of evidence which have never been yet applied to similar cases, I do not see how I can receive the evidence.

The ATTORNEY GENERAL. My lord, I am certainly not aware, if I had been I should long since have stated it to your lordship, of any authority—any decided case upon this point.

The LORD CHIEF BARON. I was going to say, no authority is cited of any kind either on one side or the other; I am left, therefore, to decide upon what I call the principle of the law of England. I should say that what I have stated is clearly one of the principles of the law; I know it has not been always so. No doubt in the days of Charles the Second very likely this would have been received as evidence, and, for aught I know, it might have been effective; but now one man cannot confess another man's guilt, nor do anything to promote what can be considered as a confession. But really, Mr. Attorney, I am now addressing you upon the reasonableness of the thing. I put the case of a stolen jewel. If a man steals it, and confesses that he stole it, he escapes; he parts with the jewel to somebody else, you cannot use that man's statement, though you identify the jewel, to show that that man had stolen it; and if another person is found in possession of it under circumstances of no suspicion and a long time after, you cannot possibly use that statement, I think, to show that that was a stolen jewel.

The ATTORNEY GENERAL. I am only now about to make this remark in addition to what I urged upon your lordship on the part of the Crown. The statement of the elder Mr. Miller, whatever it may be, if permitted to be given in evidence, which we wish, was made at a time when the vessel was in his possession and under his control.

The LORD CHIEF BARON. According to that, you know, the statement of a captain or a master in command of a vessel might be given in the same way.

The ATTORNEY GENERAL. I was about merely to observe this, that in the information not only are these gentlemen who have appeared and pleaded to be found, but the names of the firm of Messrs. Miller and Sons are also included therein.

The LORD CHIEF BARON. Where is that?

The ATTORNEY GENERAL. My lord, it is before you; I will read it; it is: "Certain persons, to wit, Miller, Prioleau, Thomas, and the other persons whose names have been mentioned." My lord, it being open to the attorney general, according to the form of proceeding in this information, to allege the committing of the act complained of—that is to say, "equipping or furnishing"—in this particular instance by one person and by another, and by several, and even to declare so generally as to say that the acts were done by these, and by persons whose names are at present unknown, I submit to your lordship that that does not make a distinction between this case and the ordinary case of a declaration, say between plaintiff and defendant, on an information of the attorney general against a particular person, who may be called the defendant.

The LORD CHIEF BARON. I beg your pardon, Mr. Attorney General. I have been hitherto only looking at the abstract that had been furnished to me, in which the names of Millers do not appear.

The ATTORNEY GENERAL. No, my lord. It is said "Sillem," &c. It is a pity it should have been so brief.

SIR HUGH CAIRNS. Your lordship may take it that every count has the same names as the first. You may take it that one count will show everything that is in the others on this point as to these names.

The LORD CHIEF BARON. How many counts are there?

The ATTORNEY GENERAL. There are ninety-eight counts; but the first eight counts disclose the whole of the pleadings. The other counts vary only in taking the words of the statute, such as "equipping, fitting out, and endeavoring to fit out," and the like. The first eight counts are the only counts that any one need pay the least attention to upon this point; and the first count raises this question as to the names.

The LORD CHIEF BARON. "For that certain persons, to wit, William Cowley Miller, Thomas Miller," and others, "heretofore and before the making of the said seizure, and after the 3d day of July, in the year of our Lord one thousand eight hundred and nineteen, and before the 25th day of May, in the year of our Lord one thousand eight hundred and sixty-three, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, did equip the said ship or vessel with intent and in order that such ship or vessel should be employed in the service of certain foreign states, styling themselves the Confederate States of America, with intent to cruise and commit hostilities against a certain foreign state," and so on. There is issue joined upon that now, and the question is, What is the issue?

The ATTORNEY GENERAL. My lord, I apprehend that the issue is whether the statements in the information are true. The statements in the information are that various persons, including Messrs. Miller and Sons, or the elder Miller, or one of his sons, did the acts which are relied upon as constituting a forfeiture.

The LORD CHIEF BARON. This clause that I am referred to says this: "No claim shall be made but by the true owner, who shall make an affidavit, or it shall be made by the attorney, stating that he has good authority, and on failure of making such proof of ownership, the goods shall be condemned, and judgment shall be entered thereon by default according to the usual practice of the court."

The ATTORNEY GENERAL. What I was about to submit was merely this, that the effect of that section, which your lordship has just adverted to, is to allow persons in the position of Messrs. Fawcett, Preston and Company to make that affidavit, (the truth of which we cannot deny—it cannot be denied now,) then to come forward as opponents, so to speak, of the Crown, and to put the Crown, as they do by their plea, upon proof of the allegations in the information. But, whatever those allegations would have meant or did mean before the appearance of these gentlemen, they mean, after they have pleaded, that the matters, I apprehend, put in issue are clearly those which are averred upon the face of the information. Now, upon the face of the information it is alleged, among other things, that Messrs. Miller and Sons, or the elder and younger Miller, among other people, did the acts upon the doing of which reliance is placed in the information to sustain or found the forfeiture. My lord, I put that forward as another ground, in addition to those which have been previously urged, why the statement of Mr. Miller, under these circumstances, ought to be received in evidence.

The SOLICITOR GENERAL. Your lordship has been so good as to permit the matter to be reconsidered, therefore I may be excused in adding some observations.

The LORD CHIEF BARON. I assure you, Mr. Solicitor General, I shall be extremely glad. The fact of there being no case cited at all makes it very desirable that one should hear everything, and that every gentleman, especially so high an authority in the law as you are, should contribute all he can to the information of the court; and I am sure I am very much obliged to you.

The SOLICITOR GENERAL. My lord, we certainly do regard the point as one of extreme importance, and if your lordship's judgment should finally be, assuming that no other court should at any time differ from you, to the effect that the declarations of this kind from the builders should not be admitted, we are seriously apprehensive that it may be a decision that will practically render nugatory the act, and in all after cases make it absolutely impossible even to prove that intent, which is necessary to work the forfeiture.

I will give some additional reasons, if I am permitted, for the conclusion at which we had certainly arrived, that this evidence was legitimate and admissible. My learned friend, the attorney general, has referred your lordship to the form of the information, and your lordship will recollect under what circumstances such an information is unavoidably filed. The Crown, upon information which reaches it, and which of course can only be founded upon the overt acts and declarations of those who are seen to be connected with and in personal possession of the vessel and exercising acts of ownership and control over it, seize the vessel as already forfeited—already forfeited, mind, under the clause of the act of Parliament to which I shall refer. The Crown makes its case, files its information, and alleges upon the face of that information who are the persons as to whom it is prepared to prove acts done with the intent which is made illegal by the statute. Now the law permits any one in the world to come in and make a claim, provided either he, or in some cases his

attorney, will accredit the claim upon the record by a certain affidavit—that is, the affidavit to be made under the three hundred and ninth section of the customs consolidation act, and that affidavit is to be merely to this effect: “If the person himself shall be in London, Edinburgh, and Dublin, or within the liberties thereof, it should be made by him before one of the judges of the court to which the ship or goods are returned or in which the information is filed, that the ship bought, or the goods was or were his property at the time of seizure,” as to which I ask your lordship’s particular attention to the fact that that affidavit is only to be made by the party, “if he be at the time in London, Edinburgh, or Dublin, or within the liberties thereof.” “But if such person shall reside elsewhere, then oath shall be made by the attorney by whom such claim or appearance shall be entered that he has full authority from such owner to enter the same, and that, to the best of his (the attorney’s) knowledge and belief, such ship or goods were at the time of the seizure thereof the bona fide property of the person in whose name such claim or appearance is entered.” Can it be believed, my lord, for a moment, that the legislature intended, by authorizing an attorney in any case in which the client did not reside in London, Edinburgh, or Dublin, (in this case whether it has been done I do not know, whether it is the attorney’s affidavit or the party’s,) to state something to the best of his knowledge and belief as to the ownership, and that that should be such evidence against the Crown that the Crown should not be permitted to go into proof of the matter alleged on the face of the information as to acts done by those who were in the ostensible possession and exercising all the powers of ownership over the vessel before the date of the seizure? Is it possible that such virtue can be attributed in this act of Parliament to the oath of an attorney as to the best of his knowledge and belief? My lord, this is the attorney’s affidavit, and that upon which your lordship is asked now to exclude the evidence of the persons who had the indicia of ownership at an earlier period, the declarations of the builders, who must have known better than any one else in the world for what purposes they were building the ship, and on whose orders and on whose account, which was the next thing we were going to ask. Your lordship is asked upon this affidavit of the attorney—of Mr. Rowcliffe, who merely says he has authority, full authority—from Mr. Sillem and others, whom he names, to enter a claim in this honorable court “that the vessel called the *Alexandra*, with her tackle, apparel, and furniture, returned in the within indenture of appraisement; and this deponent further saith, to the best of his knowledge and belief, the said vessel, with her tackle, apparel, and furniture, were, at the time of the seizure thereof, the bona fide property” of these people. He has not shown any means of knowledge whatever. The statute, no doubt, makes that sufficient, but for what purpose? The statute does not say that the evidence which would otherwise be receivable is not to be receivable when that affidavit is made, but merely that the *locus standi in curia*, the right to litigate the question with the Crown, is to be granted to the person whose attorney has made that affidavit. I say if you can exclude the declarations of the builders, who, in the absence of this affidavit, have the possession, the control, and all the evidence of ownership, the statute is made a dead letter, and nothing is necessary but the moment that a thing of this sort should get wind for some people to come forward and to say, “We are the true owners, we claim the vessel.” The attorney makes the affidavit upon the record, and, of course, my lord, the persons chosen to come forward in that position will be carefully selected as those against whom the evidence which is known, or may probably be surmised to exist, will, with the least degree of facility, be brought to bear.

Now, my lord, let us pass from the affidavit to the act of Parliament under which this proceeding is taken. Does the act of Parliament say that you are to try the question of forfeiture solely with reference to the person who claims and makes this affidavit, and upon the assumption that he has made out that sort of title which the purchaser of a watch or the purchaser of a pair of shoes in market overt has against the rest of the world? Why, what do we know about the title of this owner? What do they mean by saying, or what does their attorney mean by saying, “bona fide owner?” Is it the legal or the equitable ownership? Is it the sole ownership, or is it ownership in partnership? When did they get that title? Where is the deed of sale? By what means did they get it? None of these things is known, and surely it is for them, if the evidence is to be rejected which is otherwise available in support of the allegations in the information, because they say at the date of the seizure they were the owners, surely, my lord, in order to displace what otherwise would be the proper incidents and facts of that evidence, we ought to know from them how they became owners and when they became owners.

The LORD CHIEF BARON. The act does not require that. The act says, upon that affidavit being filed—it may have been unwise, but it says, upon the affidavit being filed they have liberty to come in and contest the matter.

The SOLICITOR GENERAL. Just so; they may come in and contest it, but the act does not say they may come in and contest it with the advantage of persons whose ownership is to all intents and purposes assumed to be a real and bona fide ownership at that time, that the nature of the evidence which the Crown may give is to be cut

down by means of their making that affidavit. They require under the act nothing more than a *locus standi* to come in and claim to be admitted to litigate the question; but the act does not at all say that that which would be evidence in support of the allegations contained in the information shall not be received because that affidavit has been made. And I beg your lordship to observe that it is impossible that should have been the intention of the legislature, because, by the statute under which this proceeding arises, the forfeiture takes place before the date of the seizure, and therefore persons who come in and say they were the owners at the date of the seizure do not really, and the legislature did not require that they should, apply themselves to the period of time at which the forfeiture, if it ever took place at all, did take place. They come in denying that there was any forfeiture, for the causes mentioned in the information. The issue raised is not whether they are the parties, whether they had the criminal intent, but whether such case of forfeiture ever arose. Now, suppose any of the other parties named in the information did the prohibited acts, and with the illegal intent previous to the date of the seizure, there was a good forfeiture in favor of the Crown, and surely the Crown has a right to make out that a forfeiture had accrued to it by reason of the acts of Messrs. Miller and Company, notwithstanding the statement that at the time of the seizure, when the forfeiture did accrue, certain other persons are entitled to say that they were owners, assuming that there is no other forfeiture. Now, what is the language of the act? I must say that it is lost sight of in considering this point: "Be it enacted, that if *any person* whatever within any part of the United Kingdom shall without leave"—observe, my lord, what things are mentioned, first of all—"equip, furnish, fit out, or arm;" secondly, "attempt or endeavor to furnish, fit out, or arm;" thirdly, "procure to be fitted out or armed;" fourthly, "who shall knowingly or willingly," &c. Of those different words, some certainly would not apply to the owner; that is quite clear, because the knowingly aiding, assisting, and being concerned is distinguished from the other offense, and would be the act of the accessory and not of the principal—and if any of these things are done with the intent mentioned, first of all there may be penalties against the person—but then quite disengaged from these penalties against the person, the clause goes on to say, "and every such ship or vessel with the tackle, apparel, and furniture, together with all the materials, arms, ammunition and stores which may belong to or be on board of any such ship or vessel, shall be forfeited." If any one of those things are done the forfeiture takes place. Well, the seizure follows afterward—an interval, perhaps a considerable interval, takes place between the act which forfeits and the actual seizure, and is evidence against the persons who did the criminal act with the criminal intent, having at that time dominion over the vessel to be rejected—evidence which will be good against them who are charged with it in the information, merely because you have got this affidavit, giving a *locus standi in curia* to a person who says that at a subsequent date, the date of the forfeiture, he was the true owner—a thing which a man might say who had nothing whatever to do with the ship, directly or indirectly, in the shape of a claim or title to ownership at the time when the forfeiture accrued. And I say, my lord, you are to go back upon the presumption of law, and the presumption of law is that the ship that Miller built in Miller's yard is Miller's ship until that presumption is taken away—and if it was so I think it would not be difficult to cite authorities to your lordship to show that declarations respecting the subject-matter of a cause by a person who, at the time of making them, had the same interest in such matters as one of the parties now has, are admissible in evidence against that party, though the maker is alive and might be called as a witness—which is an additional fact—that is the case of *Woolway vs. Rowe*, (1 Adolphus and Ellis, page 114.) That related to real estate, but the principle is the same; and there are multitudes of cases that illustrate the same principle. The declarations of predecessors in interest generally are receivable; and though there may be some exceptions, for instance, the case of a man who without notice takes a bill of exchange before it is due, that is in some degree an exception, founded on a bill of exchange. A man who buys in overt market may not be affected; but the general rule is that predecessors in interest do not bind by their declarations, and that persons who come in after them will be bound—and it is for them to show by actual evidence, when the turn of the defendants comes to state their case to the court—it is for them to show those declarations which give a *locus standi* in the cause, with only that evidence of title and ownership now before the court, namely, evidence of possession and control by the Millers in their yard of a thing which they themselves created by the materials belonging to them, on the one hand—and on the other hand the attorney has to satisfy the statute, saying that at the date of the seizure he believes that these gentlemen are the owners. The two things might perfectly stand together—Miller's apparent ownership could be continued till that very date—and I say, my lord, there is not the slightest ground for saying that a presumption is to be made that a builder of a ship is not the owner of it; on the contrary, the presumption is that he is owner of it at law, until some contract is shown which by law takes it out of him. Nothing is shown here; nothing is alleged except the attorney's belief that at the date of the seizure Miller is not the owner, of course.

because these gentlemen were. I submit to your lordships that this evidence is certainly receivable, and that it would nullify altogether the statute, if the contrary should be held.

The QUEEN'S ADVOCATE. Your lordship will permit me to make a very few observations in support of the proposition I ventured to state shortly to your lordship before, that the fact of these proceedings being *in rem* distinguishes the case from any precedent.

The LORD CHIEF BARON. Now I understand what you mean.

The QUEEN'S ADVOCATE. That is what I meant certainly. "*Brevi esse laboro, obcurus fio*," was very much the case. Your lordship will allow me to make a few observations that may contribute to throw light upon the case which is now before your lordship. Let me ask this question: Suppose this vessel had been equipped, furnished, fitted out, and armed for the illegal purpose mentioned in this act, *before* Messrs. Fawcett and Preston became possessed of her, can anybody doubt that she would be forfeited to the Crown? She would have been forfeited to the Crown before Messrs. Fawcett and Preston took possession of her.

The LORD CHIEF BARON. Yes.

The QUEEN'S ADVOCATE. And how can the title of the Crown be divested by the fact that she was sold with a bad title to Messrs. Fawcett and Preston afterward, which would have been the case? And yet a decision which shut out the means of showing that she had *de facto* been forfeited to the Crown would be tantamount to giving a title to Messrs. Fawcett and Preston. May I also ask, my lord, supposing this case was to be looked at before the statute of Victoria, chap. 107. Supposing chap. 107 had not passed, would not the issue, divested of technicalities, plainly be this; as under the 59 Geo. III, c. 69, sec. 7, it is "*res*," this vessel had been forfeited to the Crown—that would have been the question and the fact; a subsequent statute has enabled a particular person in making a particular affidavit to contest that that question could not shut out any evidence which would otherwise have been receivable. My lord, there is an analogy, I do not say it is exact, (it is not,) but there is an analogy which those who practice in the prize court are quite familiar with. The claimant in the prize court may be a totally different person from that person whose evidence condemns the vessel. The question I would really submit is, has any act been done to this vessel by any person which under the provisions of this statute has forfeited it to the Crown? And if that has not been the case are not we, who appear for the Crown, entitled to show that by the declarations of the persons who have done that act whereby the ship has been forfeited, they are not practically and substantially, and for all the purposes of justice, the real defendants, though another person may be the claimant, in order that the question may be raised before the court? My lord, I am sure your lordship would be averse to put any construction upon this estate which would really rob it entirely of its efficacy; because, my lord, it is perfectly clear from what the solicitor general has said—and I will not travel over that ground again; I should not only be putting water into his wine—it is perfectly clear that any person might come forward—almost any person, certainly before the statute, anybody without any fear of any penalty might come forward—the very person perhaps who was least interested in the vessel might have come forward, and by his coming forward have prevented the only evidence which could have condemned the vessel being laid before your lordship. I really do think, my lord, that for these reasons, regard being had to the peculiar nature of the proceedings, none of the precedents which your lordship has stated would be militated against, by admitting the evidence of the person whom we charge as being the owner at the time the vessel was forfeited.

Mr. LOCKE. My lord, I wish to make one or two observations in this case. Your lordship asked what the issue was. Now I humbly submit to your lordship that the issue is, have not these persons who are named in the information —

The LORD CHIEF BARON. Including the present defendants and others.

Mr. LOCKE. Done to the Alexandra any of the acts which are expressed here, namely, equipped, fitted out, or procured to be fitted out, any one of these things alleged in the information with the intent of equipping that vessel against the federal States, which were at peace with this country?

That, I submit to your lordship, is the issue in the case, and if your lordship will look at the first count in the information, it will be quite sufficient. It is not necessary to look into any reason, because they merely vary as to the acts as they appear in the seventh section of the act of Parliament, and likewise vary as to the names they give to the federal States and the Confederate States. But in the first count in the information there is quite sufficient for my purpose to point out the view which I take of this case. Now that information directly states that these persons, naming them all, the two Millers appearing as the two first, did equip this vessel with the intent which is made illegal in the act of Parliament. Very well, I submit to your lordship that they become all of them defendants by being so charged in the first count in the information. Then I ask how can these parties from a certain number of these defendants coming forward and saying "the vessel belongs to us," get rid of the liability of

the other defendants who are charged with these acts, which if they have committed those acts, has given the Crown the title to forfeiture? My lord, if the question were as to the proprietorship of the parties who make the claim, and if that were made the only issue that your lordship had to try, they ought to begin, they ought to establish their right to the vessel, and whether they have a right or not is perfectly immaterial. This vessel, I take it, might belong to the most innocent persons, and yet if it were used for the purpose and with the intent of attacking the federal States, if it were fitted up by anybody for that purpose, I take it, my lord, upon the seventh section of the act of Parliament, that that vessel would become forfeited. And therefore, my lord, if that be so, and if it be shown by the evidence that Messrs. Miller and Company and other persons were acting together or acting singly with reference to this vessel, if it be shown that there was a community of interest among them, so that they were acting together for one common object; then I submit to your lordship that any statement by Messrs. Miller, although it might not be evidence probably against any one of the other persons in the transaction, still, if they are defendants in this inquiry, is evidence against themselves; and if in the result it should be shown, by the evidence of the Crown, that any of these persons, (it is not necessary to prove that they all did it,) but that any one of these persons equipped this vessel for the purpose alleged in the information, then the Crown would have had a right to forfeit the vessel. The issue, as I submit to your lordship, is whether or not this vessel was equipped by any of these parties with the intent alleged in the information; and if that is made out, without reference to the ownership or without reference to their combining together, or any question of that kind, the issue is made out that the vessel was equipped for that purpose, and therefore she ought to have been forfeited. I submit, my lord, that looking at it in that point of view, it is quite immaterial to consider what were the claims of these parties to the vessel; because whoever it might belong to, still, if it is to be used for that purpose, the vessel is forfeited.

MR. JONES. I will ask your lordship's permission to add one remark, which is that it is not asserted that this vessel is the property of Messrs. Fawcett, Preston and Company. It is no part of the issue whose property it is, therefore I apprehend the question is open to the defendant upon the evidence, unless it should appear to your lordship that upon the evidence as it stands it is probable it was not the property of Messrs. Miller and Company at the time these declarations are spoken of; it is for your lordship to determine whether, in so far as ownership is concerned, it ought not to be determined at once as a matter of fact, either by your lordship or in whatever way your lordship may choose to have it determined, in whose ownership it was at the time of the declaration.

SIR HUGH CAIRNS. My lord, I cannot at all feel any regret that this question has been by your lordship allowed to be reopened; because I cannot help thinking that the more it is considered, upon the surer and more perfect grounds, the more your lordship's original view will be confirmed, and the arguments of my learned friends, I think, when they are examined, will not in any way be found to displace that view. There are one or two matters which we may get rid of at once and for all in order that we may not embarrass this question; the first is this question on the affidavit as to property.

THE LORD CHIEF BARON. The affidavit, it seems to me, with great deference to the learned solicitor general, has really nothing to do with this argument. The affidavit is the condition upon which a party is allowed to come in, when he has come in there is an end of any comment about the affidavit. There he is; the question is, what is to be tried? It may have been very unwise to have made the provision for coming in, but when he is in there is an end of the affidavit; I have nothing to do with it at all.

SIR HUGH CAIRNS. And the affidavit is conclusive as to the fact averred in it, viz: that at the time of the seizure the Crown is willing to admit, (whether it is wise or unwise I have nothing to say to it,) that certain persons who have made the affidavit or in whose behalf the affidavit is made were the *bona fide* owners.

THE ATTORNEY GENERAL. We do not admit that; there is no question of ownership raised, but for the purpose of contesting the title of the Crown to the forfeiture.

THE LORD CHIEF BARON. They are let in to contest.

THE ATTORNEY GENERAL. Just so, my lord.

SIR HUGH CAIRNS. I will read my learned friend's own statement. The affidavit as to Messrs. Fawcett & Co.'s ownership "must be taken to be true."

THE ATTORNEY GENERAL. So the statute says.

SIR HUGH CAIRNS. So the statute says: and I desire to say nothing more, therefore, as regards the state of the seizure. For all the purposes of this proceeding, whether it is wise or unwise, I say again I care not; the legislature is content to say Messrs. Fawcett, Preston and Company are to be considered the true and *bona fide* owners. Now, my lord, let us consider for a moment what is the meaning of the phrase which is used in law, that this is a proceeding *in rem*. I apprehend that the meaning of it, and the only meaning, is this: that when judgment passes it is a judgment conclusive as to the status of the ship in question; it is a judgment which leads to certain incidents. It cannot be contested or differed from in any other proceeding. But as regards the mode

of trial, which is what your lordship has now to deal with. I say that is a perfectly different matter. The trial is a trial *inter partes*; it is a trial in which they are defendants, and they are called defendants on the record; they are admitted to plead, and they have pleaded, and the record before your lordship is a record containing the plea of the defendants; and therefore I apprehend the mode and form of trial must go on just in the way in which any trial goes on in a case in which there is a plaintiff on the one side and defendants on the other. And I will pray your lordship to be so good for a moment, as to observe first what the consequence of the argument on the other side is. Why, the consequence obviously is this, that all the Crown would have to do, in order to attain the end which is now contended for, would be to put into the information a large number of names, including the names of persons as to whom the Crown was perfectly sure that any admission that they desired might be got from some of them, to put in the names of all those persons and to say: "Now, we will open our case. We do not care who is supposed to be the *bona fide* owner or the defendant in the case; we will prove to you that Mr. John Smith in the street on such a day made such a declaration to some person or other." Turn to the information; you will find the name of John Smith in the information; therefore that is evidence (let the jury attach what weight to it they like) to show that John Smith made an admission, and if so it is evidence to be used on the record between these parties. Now, my lord, I apprehend that the very consequence to which the argument would go shows how intolerable the argument is, for I pray your lordship to observe that the whole of these names in the information are laid under a *velicet*. It is not incumbent upon the attorney general to prove his case with regard to any one of these single names. Moreover, the information goes on to say that not only does it make this statement with regard to the persons named in it, but with regard to various other persons at present unknown to the attorney general. Therefore, according to my learned friend's argument, it is not the admission of Mr. Miller, it is not the admission of Mr. Pmolean, it is not the admission of one person or another; it is the admission of any person they like in the whole world that they would be competent to bring forward here and say, "We have alleged in our information that various other persons combined with Mr. Miller and these persons, and we give you the admission of any person we choose to give for the purpose."

Now, my lord, I apprehend that the whole theory of admission in law proceeds upon this. The admissibility of admissions depends upon the persons who are the parties to the record, and if a person is a defendant on the record he cannot complain of this, that an admission that he has made out of the court is given against him, because he cannot dispute his own admission; and the purpose for which the admission is put in evidence is simply to dispense with the proof as against a person who, from his position on the record, is not able to dispute the statement which is so made. But I apprehend that the whole confusion on the part of the Crown is this, that they have confused the question of acts done with the question of admissions made. I will accept, for the sake of argument, this proposition, that my learned friends can give evidence of any act done by that individual, leaving the question to be considered how far the doing of that act will have a particular effect under the act of parliament or otherwise. But I affirm, and I affirm with confidence, that they cannot give evidence of statements made, of sayings said by that individual. Those are quite different matters. If that individual knows anything, he may be glad to state what he knows; but what he said in conversation I say cannot be used as evidence against any person except himself. If he is on the record, if he is here as a defendant, able to conduct his case, and to prove or to disprove the allegations against him, then, as a short cut, the Crown may prove what he said out of court because he is on the record and cannot estop it. But I say, as against a third person, you cannot give any evidence as to what that person said. And I pray your lordship to observe further what the consequence would be of the question which has been put by my learned friends being answered. Is the question which they have put an inquiry as to what Miller said about his own acts? I do not admit that, even if it was, that would be admissible; but the question which they put is this: What did Miller say about what the ship was intended for? which, of course, would go not merely to what he intended the ship for, but what other persons intended the ship for. And your lordship will remember how the evidence already stands in this case. My learned friend the attorney general has opened, and the proof so far has been attempted to be directed in accordance with his opening, to show that Messrs. Fawcett, Preston and Company at this very time, when the ship was in the yard of Miller, were directing and interfering with regard to her, and had a control over her entirely consistent with the evidence which they have given that they were the true owners. Therefore, the evidence which is attempted to be used in the shape of some statement to have been made or supposed to have been made by Miller is evidence not as to what the intention of Miller was, but by the very form of the question, it is what was intended with regard to the ship? which would be not merely what Miller intended but what any one concerned with the ship did intend. But I put it on shorter and simpler ground, and, as it seems to me entirely satisfactorily that it is of the essence of the admissibility of the declaration made by a person who is not a witness

in the cause, that the person should be a party to the cause, so that any admission made by him would be evidence. If it is not so, if the question is to prove some fact of something done to the ship, that must be proved as a fact done and cannot be proved, because some other person said it was done.

The LORD CHIEF BARON. I propose now to state what occurs to me upon the subject, in order that any other light may be thrown upon it to-morrow morning which the case admits of. It is very much to be lamented that this is the first time that the foreign enlistment act, which was passed, I think, some forty-five years ago, has ever been brought in question in a court of justice. And in looking at the foreign enlistment act, which mixes up some proceedings which may be taken in the case of a breach of the revenue laws, there is this remarkable thing about it; I believe I am right in saying that, generally speaking, smuggling has never been made a crime. There may be some offenses against the revenue which are misdemeanors, and some which are felonies; but ordinarily the cases which have come before this court are not a trial of an offense at all, and it may be that this is not. The learned attorney general or solicitor general has not pointed it out; but in this case the 7th section of the 59th Geo. III declares that not only the ship shall be forfeited, but every such person so offending shall be deemed guilty of a misdemeanor, and shall upon conviction thereof, upon any information or indictment, be punished by fine or imprisonment. And I know it appeared to me when I first took up the record (I took up only the abstract of it; I had not the least idea that it extended to this voluminous parchment) I imagined I was, among other things, trying whether the present defendants who came in and claimed the ship, avowed it was theirs, and asserted it upon their trial, were guilty of a misdemeanor by what they had done. And certainly I was disposed to try this case as I would any other for an offense, applying to it all the rules of evidence that belong to the criminal law, and certainly many others—applying this rule, that no man can be made guilty of any crime whatever by the admission of some other person that he, that other person, was guilty. But the case has this peculiar aspect about it: There is apparently mixed up with proceedings which are in the nature of proceedings in this court, in matters of revenue, a charge of misdemeanor. Now, with respect to what fell from Mr. Locke about Miller's being mentioned in the information, and, therefore, that what is evidence against them is to be received as evidence against the others, I hold that certainly not to be very valid reasoning.

Mr. LOCKE. I said against Miller himself.

The LORD CHIEF BARON. But he is not here to be tried. Miller is not here. The jury are not charged with any question whether Miller is guilty or not; therefore, as far as that ground goes, it ought to be precluded. But then I understand the way in which the learned Queen's advocate put it is this, "Yes, but Miller's admission is evidence to show that in a proceeding *in rem* against a ship the ship is forfeited." Well, I do not feel quite clear. It certainly is to be lamented that we are here without any precedent under the act of Parliament at all; and I do not imagine that the act of Parliament at all intended to introduce the strict administration of the revenue laws, with all that belongs to them, in a case where an inquiry is to take place, whether a party has been guilty of a crime or not. I imagine *all* the rules by which persons charged with crime are protected; and justice is, I believe, in this country most satisfactorily administered under those rules, and I do not imagine it is intended to deprive them of the benefit of them, by putting this question of seizing a vessel into this act of Parliament. This view was particularly pressed on me by the Queen's advocate. The question may be here not whether any person has been guilty in the least degree, but whether the vessel was properly seized. Then that would only raise this question. There is no doubt that with respect to all matters of revenue, whoever takes goods and endeavors to break the revenue laws with those goods, occasions the forfeiture of those goods, and it is no question whose they are. If a man takes any tobacco and tries to carry it where he has no right to carry it, according to revenue laws, it is thereby forfeited. I cannot step in and say "I am the owner." But query whether that applies to the case of the foreign enlistment act—whether the man whose property the ship is not, by anything he says or does, can make it liable to forfeiture.

And I still adhere to this, that the evidence I ought to look at is this, not so much whose is the property, as whether, under all the circumstances of this case, supposing this ship to be the property of the defendants, that is, of the persons who really appear and claim it, whether then any conduct of the other parties giving the appearance of assisting persons in a war with those with whom we are in amity, can afford ground for the forfeiture of the ship. As it is now nearly four o'clock, and it is so near the hour of adjournment, I propose to adjourn, and to get the assistance of my learned brothers, and see whether this evidence is admissible or not. Certainly, considered as a question of trying an indictment for crime, I should be of opinion that if I received the evidence I should endanger the verdict; but I think the proceedings would be altogether fruitless if I were to reject or admit evidence improperly.

The ATTORNEY GENERAL. My lord, we should not have tendered it in that case.

Adjourned till to-morrow.

SECOND DAY, TUESDAY, June 23, 1863.

LORD CHIEF BARON. I have to give my decision upon the question of evidence. I may as well, before the jury are all returned, shortly state the grounds upon which I propose to act every day. This was a case of seizure by an officer of the Crown on the ground of forfeiture for a breach of the law enacted by the 59th George III, c. 69, and it is the seventh section of that act under which the present proceeding takes place. The proceedings are similar to those which very frequently come before this court for a seizure for a breach of the revenue laws. There is, however, this distinction between the present case and those which so frequently occur in this court, that I believe I may say in general (I am not now aware of any exception) none immediately occurs to my mind at present, although I think it is very likely that there are some matters that are made misdemeanors, or may be so in some cases; yet, generally speaking, breaches of the revenue laws in this country, that is, the evading the payment of a tax or custom, although matter for an action, is not made a misdemeanor by any law that I am aware of in this country; whereas this particular matter is in the first instance made a misdemeanor. The provision of the statute is this: "If any person within any part of the United Kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm," and so on, or "shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming," and so on, with the intent of breaking the directions of the foreign enlistment act, "every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof upon any information or indictment, be punished by fine and imprisonment." And then it is added, "and every such ship or vessel, with the tackle, apparel, and furniture," shall be forfeited, and it shall be lawful for an officer of the customs or excise to seize the vessel, and then a proceeding against her may be prosecuted, and the vessel may be condemned in such manner as, and in such courts as ships or vessels may be prosecuted for the breach of the laws for the protection of the revenue.

This case, therefore, has the special circumstance that the act creates a misdemeanor, and it certainly places (upon that point there can be no question according to the enactment) the parties as guilty of a misdemeanor and the vessel as forfeited. Now, certainly the impression upon my mind originally was, upon the abstract which was furnished to me, that it would involve an inquiry into the guilt or innocence of the present defendants, who now appear; and it raised the question whether they had been guilty of an infraction of the foreign enlistment act. It is to be observed that precisely the same matter which condemns the vessel to forfeiture subjects the party to fine and imprisonment. Now, generally speaking, there cannot be, as I own I think obviously there ought not to be, two trials for the same alleged offense; one to try whether the ship has been forfeited, and another to try whether the parties are guilty of a misdemeanor. If the ship has been forfeited, the parties whose conduct led to the forfeiture must be held guilty of a misdemeanor, and it would be a considerable inconvenience, and a manifest inconvenience, that there should be two trials, possibly with two different verdicts; certainly it would not lead to a creditable administration of the law.

We next look to the evidence of what Mr. Miller, senior, said. I certainly considered that I was trying the guilt or the innocence of the defendants upon the record. I stated I would admit any evidence of an order or direction, accompanied by an explanation for what purpose it was given, but I thought mere admissions or statements made anywhere to anybody by Mr. Miller, senior, or his sons, or his men, will be evidence against the present defendants; and if the record, with its somewhat large number of counts, raised the question of the defendants' guilt or innocence, I should be of the same opinion still.

But the attorney general contends that this raises no question, as I understand him, of the guilt or innocence of the defendants, but merely of the propriety of the seizure. Now, to explain this, I do not think I can do any better than refer to the instance that I gave of the declaration of a shoemaker, who was making a pair of shoes. The instance is humble and familiar, and may be ordinarily called, perhaps, common place, but I selected it for the purpose of bringing immediately under the cognizance of all who might hear me the precise view which I took of the matter, and what I thought was the point to be decided. I stated that, in my judgment, if the question were raised whether a party accused of housebreaking were guilty or not, you could not give in evidence a declaration of the man who made his shoes for what purpose they were made. But the attorney general says I am not so using the word. This is what I understand, Mr. Attorney, that you contend. You say I am justifying this seizure of the shoes in the hands of the shoemaker, on the ground that it was unlawful to make shoes for the purpose for which he avowed he was making them, and that such shoes were liable to seizure. If this be the true state of the case, of the facts and of the record, it is a complete answer to the illustration that I gave. The question is, is it so? Now it is somewhat remarkable that this statute has been on the law books for, I believe, forty-three years, and yet there has been no instance hitherto of any seizure, and therefore there

never can have been any decision as to the proper mode of proceeding, and whether the question takes the aspect contended for by the attorney general, which had belonging to it some matters which appeared to me to raise a little question. And it is perhaps equally remarkable that the very able argument that I heard on both sides with respect to this question of evidence was not supported by a single authority in point of law, except by the learned solicitor general, who cited the case of Woolway against Rowe, which merely decided that that which would have been evidence, the man being dead, was equally evidence the man being alive; it decided that, and it decided nothing else, and I do not find that any question arises here as to whether the party is dead or alive. The discussion does not turn upon that, and the case of Woolway *vs.* Rowe proceeds upon the ground that undoubtedly every statement made by the owner of landed property, and while the estate entirely belonged to him, every statement which he made during his lifetime, the tendency of which would be to cut down his estate, is evidence against those who may afterward possess it. There is no doubt about that being the law. All that Woolway *vs.* Rowe decided was, that being the law in respect of the declarations of a person deceased, it is equally the law with respect to a former proprietor of the estate, he being alive. But I altogether agree with what fell from Sir Hugh Cairns, that that applies exclusively to real property, and a declaration, for instance, of a former holder of a bill of exchange most clearly is not evidence against any subsequent holder. That has been decided; I cannot say over and over again, but it has been decided, and has constantly been acted upon. I believe that the same rule applies to every species of personal property; the declarations of those who once were in possession of it are not evidence against those who afterward lawfully acquire it, and who are in no way connected in point of present interest with the persons making the declaration.

But then the question arises thus: While the ship was in the possession of Miller, are Miller's declarations evidence? No doubt they are against himself, but are they declarations in respect, not of the vessel when it came into the possession of and became the property of somebody else, but of the vessel during the time of the seizure, at which time it was, no doubt, in the possession—at least under the control—of Miller? Now, from the evidence already given, I have no doubt whatever that Mr. Miller, who is a ship-builder, was building the ship for somebody else. I shall be inclined to think that he was hardly capable of committing the offense which is charged in the 7th section. I think there is considerable doubt whether a mere ship-builder is such a person, unless you show distinctly that he is in concert with those who intend ultimately to dispose of the vessel. But the rules under which evidence is received or rejected appear to me to be these: In a question of doubt, if it be a civil case, the practice, and I think the correct practice, is to receive the evidence. In a criminal case the practice is to reject the evidence if it is doubtful. But the reason of that is that in a civil case if any error be committed by the reception of evidence, it can be cured by a new trial being claimed in the ensuing year in the court above. In a criminal case, if it be before a court of assize, or a court of quarter sessions, although, no doubt, the Court of Queen's Bench in criminal cases tried in that court may grant a rule for a new trial, and ultimately make it absolute, yet, generally speaking, the law of this country does not afford the means of retrying a criminal case heard before a court of assize or a court of quarter sessions, and, therefore, the rule is to reject the evidence. However, that rule does not apply to a case like the present, where there is provided the means of tendering a bill of exceptions, which you cannot do in ordinary criminal cases; and where you have the means of applying to the court for a new trial, which most certainly may be done in the present case, *secundâ causâ, secunde educitur lex*, inasmuch as a new trial may be here applied for, (and a new trial certainly may,) I do not think that the rule as to criminal cases applies. And therefore, in a doubtful case I think the evidence ought to be admitted. I have consulted my brother Martin only, for I have not had an opportunity of seeing any of the other judges. He entertains considerable doubt. I think he is rather inclined to think that the evidence is admissible; and for that reason, and for the reasons I have before stated, I shall now receive the evidence and let it go to the jury with such observations as may be made upon it. I suppose, Mr. Attorney, it is the same kind of evidence that you tendered before.

MR. ATTORNEY GENERAL. It is stronger, my lord, but of the same class; it is declarations with reference to the ship.

SIR HUGH CAIRNS. Of course we bow entirely to the conclusion your lordship has expressed, with the very clear grounds upon which it is founded; but, although we are sorry that there should be that amount of inconvenience in proceeding in this case, it will be necessary, in point of form, to reserve the question in respect of the proceeding which your lordship mentions now with respect to a bill of exceptions. Your lordship will allow us at the proper time to have the case put in that form?

LORD CHIEF BARON. You may either tender a bill of exceptions, or move the court for a new trial on the ground of misdirection.

SIR HUGH CAIRNS. I only ask your lordship to reserve the point.

LORD CHIEF BARON. I cannot reserve the point; all I can do is to take a note of it.

MR. MELLISH. In the bill of exceptions, as I understand, it will be stated, supposing it is a question of fact for your lordship, which I presume it would be, whether Mr. Miller, upon the evidence which has been taken, was building the ship for some one else, your lordship will find as the fact (supposing it be for you) that he was building the ship for some one else. It is a very essential part of raising our question, and it must be on the bill of exceptions.

MR. ATTORNEY GENERAL. That would depend upon the state of the evidence at the close of the case.

MR. MELLISH. No; upon the state of the evidence at the present moment.

MR. ATTORNEY GENERAL. We tender the question, and your lordship admits it. I think it would be very inconvenient that we should be discussing now what may be the form of the bill of exceptions.

LORD CHIEF BARON. You spoke of tendering a bill of exceptions yesterday, Mr. Attorney.

MR. ATTORNEY GENERAL. Yes, my lord; but the ground for the bill of exceptions has passed away.

LORD CHIEF BARON. Your bill of exceptions will not be tendered, then, I suppose?

MR. ATTORNEY GENERAL. Of course not; the question is admitted. How can I, except to a ruling in my favor?

SIR HUGH CAIRNS. With reference to the other remark of the attorney general, I think your lordship will consider that the bill of exceptions with regard to the time should proceed upon the evidence at present taken, and not upon the state of the evidence at the close of the case.

MR. ATTORNEY GENERAL. The bill of exceptions will come in in proper time.

MR. MELLISH. I beg pardon, the bill of exceptions must be tendered before the question is answered. Bills of exceptions to the evidence, I apprehend, ought properly to be tendered before the question is answered.

LORD CHIEF BARON. Certainly.

MR. MELLISH. Then it cannot be tendered now.

LORD CHIEF BARON. I think you had better leave that for future discussion.

MR. MELLISH. It is taken, then, that we tender it now?

MR. ATTORNEY GENERAL. You will tender it in such terms as you think fit, we cannot interfere with that. Your lordship's ruling would now go to admit the question, which, yesterday, after a short and not very perfect discussion, was rejected, namely, as to whether any term was used by Messrs. Miller in their yards, descriptive of the *Alexandra*. To prove that, we will recall that witness.

LORD CHIEF BARON. I think you have got it already; one of the witnesses was eager and anxious to say that he knew it.

MR. ATTORNEY GENERAL. The evidence will not occupy a moment.

LORD CHIEF BARON. He called it a gunboat.

MR. ATTORNEY GENERAL. I should not propose to recall the witnesses, but one cannot tell what kind of opposing evidence may be adduced. We go on with Mr. Da Costa at present, upon whose evidence the second discussion arose.

MR. JOHN DA COSTA called and further examined by the QUEEN'S ADVOCATE:

SIR HUGH CAIRNS. I think your lordship was good enough to take down the exact question upon which the discussion arose.

LORD CHIEF BARON. I have it.

SIR HUGH CAIRNS. Perhaps your lordship will favor us by reading it.

LORD CHIEF BARON. The question was this, "Did Mr. Miller, senior, on that occasion say anything to you as to what the vessel was intended for?" The evidence was, "I went to see the trial trip of the *Alexandra*, the second trial, on the 3d of March, 1863. I saw the first trial, but I cannot say the precise time when the second trial took place. I saw Miller, senior, on the Monday, and I saw the boat called the *Emperor*;" Then the question comes, "Did Mr. Miller, senior, on that occasion, say anything to you as to what the *Alexandra* was intended for?"

MR. ATTORNEY GENERAL. I think the objection would hardly be to that preliminary question, but to that which would follow.

LORD CHIEF BARON. The natural answer to that question would be only "Yes." I should call that rather a curt and shabby answer to that; the proper answer to that, and the natural answer to that, is "Yes," he, did he said so and so.

MR. ATTORNEY GENERAL. The next question would be the question, "What did he say?"

LORD CHIEF BARON. The witnesses do not fence in that sort of way, unless they are told to do so.

MR. ATTORNEY GENERAL. The objection will be to the question whenever it shall come, "What did he say?"

SIR HUGH CAIRNS. If my learned friend desires the witness to answer "Yes" or "No," I will not object to this question; but if my learned friend does not do that, I take the objection now.

MR. ATTORNEY GENERAL. No.

SIR HUGH CAIRNS. Tell him to answer "Yes" or "No."

MR. ATTORNEY GENERAL. We ask him the question and we leave him to answer it.

THE QUEEN'S ADVOCATE. I think there is a slight mistake in your lordship's note with respect to the time. I do not think this conversation took place at the time of the trial trip, but at another time. Let me put it again, first of all taking it up a little earlier to make it quite clear. (To the witness.) Do you remember a short time before the Emperor was launched having a conversation with Mr. Miller, senior?—Yes.

When was the Emperor launched?—On the 8th day of January.

1863?—Yes.

You say you remember having a conversation with him, and now I ask you what that conversation was?

SIR HUGH CAIRNS, (to the witness.) Do not answer. My lord, that would be a question to which we object, and your lordship, perhaps, will be good enough to take note of it.

THE QUEEN'S ADVOCATE. Perhaps I had better put it, Had he a conversation with you about the Alexandra?—Several times.

Now, then, I will ask you further: You had a conversation about the Alexandra?—Yes.

Did he, in the course of that conversation, say anything to you as to what the Alexandra was intended for?—On three different occasions—

SIR HUGH CAIRNS. My lord, we object to that question, as your lordship is aware, and we shall tender, with your lordship's permission, a bill of exceptions upon it.

THE QUEEN'S ADVOCATE, (to the witness.) Now, answer my question. Did he, in the course of that conversation, tell you what she was intended for?—He did.

What did he say?—He told me she was a gunboat for the southern confederacy.

Did he say anything to you at that time about a contract for the Alexandra?—He did, my lord; must I give you the exact words that passed?

LORD CHIEF BARON. Give us the best of your recollection of what passed.

THE QUEEN'S ADVOCATE. The question is, Did he say anything to you, then, about a contract for the Alexandra?—He said, "We, conjointly with Messrs. Fawcett, Preston and Company, are building this vessel for Messrs. Fraser, Trenholm and Company."

Did he say for whom?—They were the agents for the southern confederacy.

SIR HUGH CAIRNS. Did he say that?—Those are the words he said.

THE QUEEN'S ADVOCATE. What did he say?—They were the agents; in the conversation that took place he several times said so.

In the conversation that took place he said several times that they were the agents for whom?—For the southern confederacy.

Had you any other conversations with him about the Alexandra, and for whom she was intended?—Yes, certainly.

What did he say at those other times?—It was the same sort of thing.

LORD CHIEF BARON. It was to the same effect?—Yes.

THE QUEEN'S ADVOCATE. Were these conversations that you are now speaking to before or after the launching?—Before the launching.

Were these conversations which you have last spoken to before or after the one you have mentioned?—These were after.

And on several occasions you say he said the same thing?—Yes.

At these times was the Alexandra still on the stocks in Messrs. Miller's yard?—She was.

LORD CHIEF BARON. What progress had she made then?—At the time of this conversation or before?

At the time?—They were driving copper bolts through the timbers and planking at that time.

THE QUEEN'S ADVOCATE. I think you said yesterday that he was employed in making a tug-boat for you?—Yes.

Do you remember his saying anything to you about taking away the men from your tug to lay the blocks of a gunboat?—Yes.

SIR HUGH CAIRNS. I object to that.

THE QUEEN'S ADVOCATE. Did he say anything to you as the reason why he took away the men from your tug?

SIR HUGH CAIRNS. Did he take away the men?

THE QUEEN'S ADVOCATE. Did he say anything to you about taking away the men from working on your tug?—Yes.

What did he say to you?

SIR HUGH CAIRNS. Before that is answered, I submit to your lordship whether this has anything to do with the Alexandra?

THE QUEEN'S ADVOCATE. The answer will show.

Those men were taken away for the laying of the blocks, to lay the keel of a gunboat.

At the time that he said that, did he make any gesture—did he point to anything?—The block lay right close to our tug.

Did he point to them?—He pointed; they were there, and the men at work at them.

Did you afterward see any vessel upon these blocks which he pointed to?—Yes.

What vessel?—The Alexandra that is now.

Do you remember having a conversation with Mr. Miller upon the subject of the Alexandra in November, 1862?—I do.

Do you remember whether he said anything about the name of the vessel on that occasion, in November, 1862?—He did.

What did he say?—Alexandra.

Tell me what he said.—He said that the vessel—the gunboat—was to be called the Alexandra.

Did you ask him any question why she was to be called the Alexandra?—I did.

What was the question?—I asked him, was that the name of some state or city, and he said it was.

Did he say where it was?—He said it was in the southern States; I think that was the word.

Did he say anything about its agreeing with any other name?—He said it was in unison with the Alabama and the Florida.

Upon this point I will ask, did he ever speak of the Florida, as you call it, by any other name?—The Oreto.

You have told us about a conversation in November, 1862. Do you remember having a conversation with him in December, 1862? Do you remember having another conversation with him in the next month?—Yes.

Do you remember anything in that conversation being said about guns?—I cannot say; I do not remember about the guns.

You do not remember anything being said about guns?—Not in December.

Do you remember anything being said about copper?—Yes.

What was it?—I said I thought we had a great deal of copper going on board for a vessel of that size.

What did he say?—He said it did not matter; the parties that they were for did not care for expense.

Do you remember at any time his saying anything to you about a gun in connection with the Alexandra, or guns?—Nothing; only gunboat, that is all.

That is all you remember?—Yes.

Do you know Mr. Welsman and Captain Tessier?—I know Captain Tessier quite well; Mr. Welsman only slightly.

Do you know him by sight; Mr. Welsman, I mean?—Yes.

Did you ever see Mr. Welsman in Mr. Miller's yard during the time when the Alexandra was building?—I did.

LORD CHIEF BARON. Did you see Captain Tessier?

THE QUEEN'S ADVOCATE. This is Mr. Welsman, my lord, that he says he saw.

To the witness: Is Mr. Welsman a member of the firm of Fraser, Trenholm & Co.?—He is.

They are merchants at Liverpool, I believe?—Yes.

LORD CHIEF BARON. What firm?—Messrs. Fraser, Trenholm and Company.

THE QUEEN'S ADVOCATE. Did you see him more than once?—Yes.

Did he do anything when he was there?—I saw him giving orders for one of the men to work at this boat.

That is this Alexandra you mean?—Yes.

Did you see him doing that more than once?—The order; that was only once.

Did you see him doing anything else beside giving orders?—He was always inspecting round about.

Always inspecting, do you say?—When I saw him.

Do you know Captain Tessier; I think you said you did?—Quite well.

Have you seen him there during the time the Alexandra was being built?—Yes.

More than once?—Yes.

Have you seen him there frequently?—Yes.

Have you heard him give any orders respecting the gunboat?—I did not hear him give any orders.

Have you seen him do anything?—He was always about her superintending.

Messrs. Miller and Sons, you say, were making a tug-boat for you; when you dealt with them under what name did you deal with them; how did you deal with the Millers, as a firm or as a single person?—I always took them as Messrs. Miller and Sons.

This is the way in which you dealt with them?—I believe the contract is only signed by Mr. Miller himself.

Did you see the son in the yard ever?—Yes.

Which son was that?—Thomas.

Was he frequently in the yard?—Always.

Did you see him do anything with regard to this boat?—Of course he had all to do with the whole of the vessels.

Was he generally superintending the business of the yard?—Decidedly.

I think you said yesterday that there were two trial trips of the Emperor?—Yes.

We will pass over the first trial trip and come to the second; can you tell me the date of the second trial trip of the Emperor?—The 3d of March.

The 3d of March this year?—Yes; that was the second trial trip.

On that occasion did you go on board the Emperor?—I did.

Did you see young Mr. Miller on that occasion?—Yes.

Was he on board the Emperor with you?—Yes.

And Captain Tessier?—Yes.

On that occasion did Captain Tessier, in the presence of Mr. Miller, say anything about the Oreto?

SIR HUGH CAIRNS. I object to that. Now, my lord, this is certainly a question raising a new point. I hope the witness will not answer it at present. Now, my lord, here is a question not about the Alexandra at all, but about another ship, which, so far as we know, is not in question in this suit, which is not mentioned in any way in the information, and the relevancy of which to the question of the Alexandra, certainly we have got nothing which can guide us to understand it. Now a statement made by Captain Tessier with regard to another ship in conversation with Mr. Miller, the younger, who up to this moment is not even proved to be a partner with his father, but rather disproved and shown not to be a partner with his father, cannot on any conceivable principle be evidence.

LORD CHIEF BARON. I had better take down the question exactly; what was it?

The QUEEN'S ADVOCATE. My lord, the question is this: In the presence of Mr. Miller, the younger, did Captain Tessier say anything about the Oreto?

SIR HUGH CAIRNS. My lord, I object to that question, and it becomes a double objection. Now, in the first place, I object to anything that Captain Tessier said about the Oreto, as being in the first place irrelevant, and in the second place as being no evidence on this issue. I object in the next place to the mode in which the question was put as to Captain Tessier in the presence of Mr. Miller, the younger, saying anything about the Oreto, because that supposes that the answer to the question might be made evidence, because of its relating to something which was said in the presence of Miller, the younger; Miller, the younger, as far as we know, at the present time is a workman, or at least a person employed in superintending the yard which belongs to his father, the father making contracts in his own name. I do not know how anything said by or in the presence of Mr. Miller, the younger, can be evidence.

MR. KARSLAKE. My lord, I submit that this cannot be evidence in any way. Your lordship has admitted evidence as to what Mr. Miller, the elder, said with respect to the Alexandra at the time when Mr. Miller, the elder, had the ship upon the stocks in the yard. Now my learned friend proposes to ask what Captain Tessier, who was in the yard, and who looked at all events at the vessel, the Alexandra, said in the presence of Mr. Miller, the younger, who is said to have been a person employed in the yard of his father; and this conversation is said to have taken place, not as regards the Alexandra, but as regards another vessel, the Oreto, at the time when the Emperor was on her trial trip. Now, my lord, unless my learned friends propose to ask any conversation that any person ever had with reference to those vessels, I submit that this evidence cannot be admissible. Your lordship has already suggested that the mere fact of naming persons as they are named here in this information upon the record cannot make the declarations of those persons evidence. You find here that there are several persons named with divers others unknown; and according to the course of examination which my learned friends are now adopting, a statement of any person who has at any time said anything with reference to a vessel, with the purpose of fixing a character upon her, even without mentioning her, but having reference to another vessel upon which they might fix a character as resembling that under which the vessel is represented, is to be evidence upon this information. I submit that it is inadmissible, both upon the ground that any statements of Captain Tessier cannot be given in evidence, and also that they are at all the more admissible as evidence, because those statements are said to have been made in the presence of a young person named Miller, who is said to have been the son of the Mr. Miller in whose yard the vessel was laid down.

MR. ATTORNEY GENERAL. My lord, I submit that the question properly ought to be admitted. The first objection taken to it is that it is irrelevant. I thought, my lord, that in opening the case originally, I had endeavored to make it very clear in what way I proposed to treat evidence with respect to this vessel, and another as relevant to the present inquiry. And the way in which I proposed and propose to use the evidence, if admitted, is this: It is a part of the case for the Crown to establish the connection, whatever may be the nature or the extent of it, of persons in Liverpool whom I described, and who will be understood by that description as agents for the confederate government, with the construction and with various arrangements in the course of the construction of the Alexandra. Now in order to prove that those persons were agents

for the confederate government as a part of my evidence, I proposed and propose to show their connection with other vessels which, beyond all doubt and question, have become and are war cruisers in the confederate navy, the Alabama being one of those vessels, and the Oreto the other. And thus, at all events, I think the objection of irrelevancy is answered. Now, my lord, I come to the other question.

LORD CHIEF BARON. They put it as irrelevant, *quoad* the Alexandria; it may be very relevant upon another view, but they say it has no connection with the Alexandria, as I understand.

MR. ATTORNEY GENERAL. I will state again in a moment the way in which I put it. It is this, that I show certain persons interfering and intermeddling more or less with reference to the Alexandria, and in order to give to those persons the character, to show that they bore the character which I assign to them of agents for the confederate government, I propose to prove their connection with other vessels, undoubtedly and beyond all controversy, as I shall show before the case is at an end, the war vessels of the confederate government. My object is to give to those persons the character (and that is the only object in the present part of the inquiry) of agents for the confederate government. The Oreto is one of those vessels; we have it now that that was spoken of by Mr. Miller as being the Florida, and therefore that may be literally assumed. I shall show that the Florida is now, and has been for some time past sailing as a cruiser under the confederate flag, acting in every respect as a war vessel of the Confederate States.

LORD CHIEF BARON. If that were so, it would be evidence upon the present inquiry if you were to prove that Mr. Miller, the younger, read a newspaper containing such and such matters; that would be just as good evidence.

MR. ATTORNEY GENERAL. I am coming to that evidence as regards the statement made in the presence of the younger Miller, but that is the second objection.

LORD CHIEF BARON. The question is this: "Did you hear Captain Tessier make a statement in the presence of the younger Miller?"

MR. ATTORNEY GENERAL. Yes; I will come to that. I was addressing myself to the first objection, namely, that of relevancy.

LORD CHIEF BARON. As to the relevancy, there is no doubt that if a man were under trial for arson alleged to have been committed in the field of a farmer in the parish of A, it would not be wholly irrelevant to say that he had been guilty of arson in a field two or three fields off; in one sense it would not be wholly irrelevant, because if there were a question or a doubt about it, it would be highly probable that the person who had committed the one would have committed the other; but that certainly could not be evidence. You see what you are bringing it to is this: if everything that was said in the presence of the younger Mr. Miller is evidence, then everything the younger Mr. Miller had read in a newspaper would be evidence.

MR. ATTORNEY GENERAL. I am coming to the objection as to the younger Miller. Your lordship has admitted statements made by the elder Miller.

LORD CHIEF BARON. That was a statement relating to the Alexandria. These are statements relating to another vessel.

MR. ATTORNEY GENERAL. Then as to the younger Mr. Miller, I would merely make this observation, he being the superintendent and manager of the business of his father, I apprehend at all events, within the limits according to which your lordship has already admitted the conversations with reference to the Alexandria, his statements will stand upon the same footing.

LORD CHIEF BARON. Certainly I have admitted the statements of the elder Miller.

MR. ATTORNEY GENERAL. However, I will not persist in the question after what has fallen from your lordship.

MR. SOLICITOR GENERAL. We will not press this question, my lord, as to the Oreto.

LORD CHIEF BARON. I want to point out to you that it is really important in an inquiry of this sort that it should be as far as possible conducted with extreme care and accuracy, and it seems to me to follow immediately, that if everything about the Alabama, or the Florida, that was said by anybody in the presence of the younger Miller is evidence, then everything that the younger Miller ever read or did, or ever heard anybody say, would come in the same way, it would seem to me to be going as far as this.

THE QUEEN'S ADVOCATE. We will connect it with the Alexandria, my lord, by-and-by. (To the witness.) When this objection was taken we were on board the Emperor, and you say that Captain Tessier and Mr. Miller, junior, were there. I had asked a question about the Oreto, which my lord rules ought not to be put.

LORD CHIEF BARON. Or rather you do not press the question.

THE QUEEN'S ADVOCATE. No, my lord, the question is withdrawn. I only meant to make it clear to the witness. On this occasion, when you were so on board the Emperor with Captain Tessier and Mr. Miller, did Mr. Miller say anything to you about the Alexandria?

SIR HUGH CAIRNS. My lord, assuming that that question is to bring out what was said, and is not for the purpose of eliciting a mere answer "Yes" or "No," then I think

it raises a question which is not at all covered by your lordship's ruling up to this time; and I will now take your lordship's judgment upon it. The evidence up to this time stands, as I understand, in this way: There was a ship building in the yard of Mr. Miller, senior; his name was on the yard; and the only person who has been brought forward who has had any dealings with them is the present witness. The present witness has told us that he had one dealing, namely, a contract which he had with them, and that that contract was signed by Mr. Miller, senior, in his own name. It stands thus: there is not a particle of evidence that the son was other than as he has been represented in the evidence, the superintendent or the agent in some way in the yard. I apprehend that a very different question there arises from that which has been already ruled by your lordship. Of course, we bow entirely to your lordship's ruling with regard to Mr. Miller, the owner of the yard, in whose possession the ship was, under whatever circumstances, for a certain length of time. But now we come to a wholly different inquiry, and I ask this question: Is every person in the yard, engaged upon the ships, an agent or a workman of Mr. Miller, senior, whether he is a clerk, or superintendent, or book-keeper, or foreman, or joiner, or anything else? Is anything he says, in the first place, in the yard in regard to the Alexandra, evidence against, really I do not know whom, against Mr. Miller, senior, against other persons, such as those whom I represent upon this inquiry? If so, in the second place, shall we go further and say that everything which Mr. Miller, junior, every foreman, joiner, or engineer says at a dinner, at a trial trip of another steamer, walking in the street in a gossiping conversation, or anywhere you please to lay the venue, is to be evidence either against Mr. Miller, senior, or against the defendants in the present inquiry. I apprehend, my lord, that your ruling does not in the slightest degree go to that, and I take leave to take this objection upon this point as one entirely uncovered by anything which your lordship has decided up to this moment, and one which requires authority to support it, which we have not heard.

MR. ATTORNEY GENERAL. Your lordship has already determined that the declarations of Mr. Miller, the father, with reference to the Alexandra, while on the stocks in his yard, are admissible in evidence.

LORD CHIEF BARON. The ship was then in his possession and under his control.

MR. ATTORNEY GENERAL. Then, my lord, I submit that the statement of the son at the same time while the ship was on the stocks, and with reference to that ship, are admissible on the same grounds.

LORD CHIEF BARON POLLOCK. The question is whether there is sufficient evidence to show that Miller, junior, was a partner.

THE ATTORNEY GENERAL. I do not put it on that ground, because if he was not a partner it would be impossible. As regards partnership we have this evidence. It is stated, not very regularly, but it came out, that a contract entered into with the witness was signed by the other alone, but he says that in dealing with the people, whoever they were, who carried on the business of the ship-building yard, they dealt with him under the name of Miller and Sons.

SIR HUGH CAIRNS. No; pardon me, they said nothing of the kind. He was asked, what were the dealings? and he said, I had a dealing with him on a contract signed by the father.

LORD CHIEF BARON POLLOCK. (To the witness.) Have you ever had more than one dealing with them?—Only this one.

LORD CHIEF BARON POLLOCK. Was this particular son one of the partners?

THE ATTORNEY GENERAL. I cannot put it that there is evidence that the son was a partner.

LORD CHIEF BARON POLLOCK. Then any statement made by young Miller is no more than a statement of any other workman in the yard.

THE ATTORNEY GENERAL. I put it on this ground, that although a statement made by a person of the name of Speers, who was the foreman of Fawcett, Preston and Company, it has been admitted in evidence.

LORD CHIEF BARON POLLOCK. That was coupled with some act.

THE ATTORNEY GENERAL. Yes, I say on the ground that he was superintending the construction of machinery.

LORD CHIEF BARON POLLOCK. He was giving a direction. I will go back if you like to his evidence.

SIR HUGH CAIRNS. Your lordship is quite accurate. Mr. Speers said, Take the machinery to a certain place.

LORD CHIEF BARON POLLOCK. This is a conversation on board the Emperor during the trial trip. If the partnership of Miller and Son were proved so as to make Thomas Miller a partner, I should receive the statement on the same ground on which I received that of the father.

THE ATTORNEY GENERAL. I will make this further remark only, that Miller, junior, in one important particular, stands on the same footing on which his father stands, namely, that he, equally with his father, is one of the persons named in this record and comprised in the statement of the fitting out and keeping up this vessel.

LORD CHIEF BARON POLLOCK. The fact of its being on the record is nothing unless there is some evidence to connect it with the Alexandra.

The SOLICITOR GENERAL. The ground we submit to your lordship is shortly this, that Miller, junior, is proved by the witness to have had the entire superintendence of the whole of the business of the yard and the construction of the Alexandra in particular. That being so, in the course of his employment he goes on this trial trip as a matter of business. One of the ships built in the yard is built under his superintendence—and during the whole time while that conversation is going on the construction of the Alexandra under his superintendence is also in progress. I would submit to your lordship, therefore, that the *res gestæ* concerning the Alexandra on which this witness is employed, as superintendent in the yard, are sufficiently connected in point of time and circumstances with the time and circumstances of this conversation to make it admissible, bearing in mind that this trial trip of the superintendence and partnership of the yard is itself a matter of evidence as far as the business of the yard is concerned. As a partnership it stands in an inconclusive state; but I think that the witness did distinctly say that he made his dealings as with the firm, although a particular contract was signed by the father.

LORD CHIEF BARON POLLOCK. He said he never had but one dealing with him.

The SOLICITOR GENERAL. Never, my lord, but this.

LORD CHIEF BARON POLLOCK. The inference from that is that the firm was under the name of Miller and Son, and old Miller dealt under the name of Miller and Son.

LORD CHIEF BARON POLLOCK. He was not a partner. He was clearly nothing but a servant, and his declaration in giving directions would be evidence, but I think not his conversations on board the Emperor.

The SOLICITOR GENERAL. If that should be so the only other remark I venture to submit to your lordship is this: If in fact the father carried on his business under the firm of Miller and Sons, he was clearly holding out his sons, or one of them, and that the son in the yard, to the world as a partner, and that put him, so far as the world is concerned, *prima facie* in that position.

LORD CHIEF BARON POLLOCK. I don't know how many sons he has, or which son he held out as a partner.

The QUEEN'S ADVOCATE. We will not press that question, my lord.

We were on the question as to the time when you were on board the Emperor on this trial trip. You said in answer to a question which I put to you before that you had seen Captain Tessier often in Mr. Miller's yard?—Yes.

I want now to draw your attention to a particular occasion. Do you remember after the Emperor's trial trip, I am not sure whether it was after the first or the second, but it was after one of the trial trips of the Emperor—do you remember being in the cabin of the Emperor with Mr. Miller, senior?—He was in the cabin when I was there.

SIR HUGH CAIRNS. Was this at the trial trip?

The QUEEN'S ADVOCATE. It was after the trial trip.

SIR HUGH CAIRNS. Was it after the first or second trial trip?

The QUEEN'S ADVOCATE. (To the witness.) Was that after the first or second trial trip?—The second.

Now, on that occasion do you remember whether young Mr. Miller came down and called to his father?—He did.

What did he say to his father?

SIR HUGH CAIRNS. Wait a minute before you answer that question.

The QUEEN'S ADVOCATE. Did he say anything to his father?—Did young Mr. Miller say anything to his father? Just answer the question simply?—He told him that Captain Tessier wanted him.

What did Miller do?—He came up.

Did you go with him?—Yes, I was up close with him.

Did you both go on deck?—Yes.

You and old Mr. Miller?—Yes.

And then were you and old Mr. Miller, and young Mr. Miller, and Captain Tessier on deck at the same time?—Yes.

Did Captain Tessier on that occasion say anything to Miller, senior, about the Alexandra—first of all, say "Yes" or "No." Did he say anything?—He did.

What did he say?

SIR HUGH CAIRNS. Now, wait a moment. This is a statement, my lord, made by Captain Tessier to Miller, senior.

The QUEEN'S ADVOCATE. We do not know what it was yet. I have only asked him if he said anything.

SIR HUGH CAIRNS. No. I quite agree. The question is, did he say anything about the Alexandra? I apprehend, my lord, that a statement made by Captain Tessier, who has no control over the Alexandra, to Mr. Miller, senior, cannot be evidence. There is no doubt that Captain Tessier's name is in the information, but still that does not make it evident.

The QUEEN'S ADVOCATE. It is not on that ground.

LORD CHIEF BARON POLLOCK. That is not the ground. That is merely a notice given.

SIR HUGH CAIRNS. Does your lordship think it falls in the same ruling as you have already given.

LORD CHIEF BARON POLLOCK. Since I have admitted what Miller, senior, said, I must admit what is said to him in reference to the ship.

SIR HUGH CAIRNS. You will allow us to take objection to this as we did to the other.

THE QUEEN'S ADVOCATE. (To the witness.) Did Captain Tessier say anything to Mr. Miller, senior, respecting the construction of the Alexandra?—He did.

What was it he said?

THE ATTORNEY GENERAL. I may state, my lord, that this is the question we wish to put. It is merely to alter the form. Instead of the question which my friend objected to, instead of having the question generally, did he say anything as to the Alexandra? We put the question, did he say anything as to the construction of the Alexandra?—Yes.

THE QUEEN'S ADVOCATE. He did?—Yes.

Tell us what he said with reference to the construction of the Alexandra?—He wanted the combings of the hatch higher.

That is what he said?—Yes.

Did he say how much higher he wanted them?—Three inches, I think it was.

Of what hatch?—The main hatch.

Did Miller, senior, make any answer?—He did.

What did he say?—He said he would not do it. It was according to contract.

LORD CHIEF BARON POLLOCK. What was done was according to contract?—Yes.

But what was proposed to be done was not according to contract?—No.

THE QUEEN'S ADVOCATE. That is, that Mr. Miller said he would not do it, because what was done had been done according to contract?—Yes.

Cross-examined by Mr. KARSLAKE:

How long have you lived in Liverpool?—I was born in Liverpool.

What was your first occupation in business; keeping a sailors' boarding-house?—No, sir.

Was that your second occupation?—I am dealing in sailors.

I did not ask you that. Did you keep a sailors' boarding-house?—My mother did.

Did you keep it afterward?—Yes.

Do you keep it still?—No.

Now you are a member of the tug company and also supply crews to vessels?—A what?

Are you a member of the tug company?—Yes.

Do you supply crews to vessels?—To ships.

Do you arrange to do that under the superintendence of those in authority under the passengers' act?—No.

You got into a little difficulty with them on the subject once, did you not?—Yes. I beg your pardon, I was agent for the ship in that case.

You were agent to the ship, and shipped men on board, and they came off to you, and you were fined?—I was fined, certainly, but they were passengers.

LORD CHIEF BARON POLLOCK. For what were you fined?—A breach of the passenger act.

Now you are part owner of the tug Emperor?—I am.

Was the Huddersfield being built by Mr. Miller?—The Huddersfield was on the star-board side of the Emperor.

Then the Phantom was on the other side?—On the port side.

These three were lying abreast?—They were.

Was the Alexandra astern of the Emperor?—No, ahead of her.

Now the Emperor was your tug?—Yes.

When was she laid down?—About some time in August. I think she should have been laid down some time before they did lay her down. She was delayed for these other vessels.

In August, 1862?—Yes.

And when was she delivered to your company?—I do not know that she is delivered yet; I cannot tell; I don't know whether the certificate is got or not. The manager is in court, and he will tell you more about it.

But you know that in consequence of the dispute, Mr. Miller has brought an action against you and the rest of your co-directors?—I am quite ignorant of it.

You do not know whether an action has been brought against you or not?—No.

You are a happy man. Will you swear that you have not had an action brought against you?—I will swear that I did not know that Mr. Miller has brought an action against me.

Will you swear there is not an action going on at the present time against you?—That I will not.

Has it never been under your notice?—Never brought to my notice.

The Phantom, Captain Tessier commanded, did he not?—He took her away from this port—from Liverpool.

And was he generally down at the Phantom at the time of her being built?—Both at the gunboat and at her.

I did not ask you that question?—He was at both.

Was he frequently down at the Phantom during the time she was building?—He was, and at the gunboat.

I did not ask you that question.—I am answering you both.

I ask you about the Phantom?—If you ask me whether he was coming there, I must tell you what he was doing.

I ask you about the Phantom. You can tell us about the other. I ask you now about the Phantom?—He was at both vessels.

You say you saw him give an order on board the Alexandra?—I did not see him; Mr. Welsman, not Captain Tessier.

The QUEEN'S ADVOCATE. No, he did not say that.

MR. KARSLAKE. He said, "I did not hear him give orders;" he "was about superintending."

I observed you dwelt particularly on the word "saw;" did you ever hear Mr. Welsman give an order?—I did.

What was it?—He told a man to knock off; he was doing something different to his wishes, and the man did knock off.

That is, he stopped work?—He stopped work and went away.

Did you see the Alexandra launched?—No.

Do you know that she was launched on the day that the Princess of Wales came to London?—I could not tell the day; I do not know.

Was that about the time?—I do not know.

You live at Liverpool?—I do; but that is a long way from the place where this vessel is built. It is away to the north end.

You do not know much about what was going on?—When I was there I did.

How many times were you there?—Twenty times.

Will you swear that?—Yes.

Were you ever there more than four times during the time the vessel was building?—Yes.

You were?—Oh yes.

Now, on this trial trip of the Emperor that you have spoken of, the second trial trip, there was a champagne luncheon?—No.

Was there at the first trial trip?—I believe there was. I had nothing to do with the champagne. I do not drink it.

What did you drink?—I drank a little wine, I think it was.

Champagne is wine. Was this rather a merry party on the Emperor?—Not at all.

A dull one?—They kept it to themselves. There was a lot by themselves. We kept to ourselves; the directors with me.

Do you recollect the second occasion?—Perfectly well.

Who had you on board on that occasion?—Mr. Thomas Miller. Do you want to know the whole of them?

They were not very numerous, were they?—There were only five or six of them. There were Mr. Thomas Miller, Captain Tessier, Mr. Speers, Mr. Cawkhill, Mr. Green, myself, Mr. Cairns, Mr. Taylor, and Captain McStoker.

And Mr. Mollroy?—No.

Mr. Cawkhill is a brother director?—He is our manager, and he knows a great deal more about it than I do.

Who sent for you, or who came to you to give some information on this subject?—No person.

You went of your own accord?—Do you want me to tell you, sir?

No, I do not. I want you to answer my question. Who did you first give any information on the subject of the Alexandra?—The consul asked me.

Who did you give information to? Was it to the consul?—The consul asked me.

I do not ask you what he asked?—I am not an informer.

Who did you first speak to about the Alexandra?—The consul.

The American consul?—Yes.

What is his name?—Dudley.

When first did you go to him?—He sent a note for me after the 3d of March; I think it was the 4th.

When first?—After the trial trip; after the 3d of March.

Do you mean after the trial trip of the Emperor?—Yes.

The second trial trip?—Yes, I think it was.

Did you also go to Messrs. Duncan, Squarey and Company?—No.

Have you seen them?—I have since.

Are the solicitors to the American consul and government at Liverpool?—I do not know that.

Did you go to Mr. Hamel and be examined before him?—I did.

Was that after you had seen the American consul and after you had seen Duncan, Squarey and Company?—I did not tell you that I had seen Duncan, Squarey and Company. Oh! yes; I beg your pardon. Yes, it was after.

Can you give us the date of your going to see Mr. Hamel after seeing the consul and Duncan, Squarey and Company?—I could not give you the date.

Tell me about when it was?—It was after this; some time in March. I do not know; I am not certain about it; I should not like to say.

Did you see McGuire, the detective?—I saw him after I got out of the custom-house. You saw him there?—Yes.

Was he going in as you were coming out?—He was going in.

You have spoken about some blocks in the yard. Were those blocks under the Phantom?—They were under the gunboat.

Well, if you will have it so, I suppose you must. I asked you about the Phantom.

The QUEEN'S ADVOCATE. We have nothing to re-examine him upon, my lord.

Mr. JOHN WILSON GREEN called and sworn and examined by the QUEEN'S ADVOCATE:

I believe, Mr. Green, you are a ship-builder in Liverpool?—Yes.

Of very considerable experience, I believe?—I have been for many years a ship-builder.

Do you remember being requested to look at a vessel called the Alexandra?—I do.

When was that?—A fortnight back.

For what purposes were you requested to look at her?—To make a report of my opinion as to what purpose she was built for.

Did you go and look at her?—I did.

Did you examine her?—I did.

Now, Mr. Green, will you be so good as to tell my lord and the jury what was the result of your examination, what opinion you formed?

SIR HUGH CAIRNS. Do not ask him that.

LORD CHIEF BARON POLLOCK. All he can tell you must be the facts.

The QUEEN'S ADVOCATE. Yes, my lord.

What did you find?—On going on board?

How was she built?—I found her bulwarks differently formed from any merchant vessel, or any other vessel than a vessel of war.

Will you go on if you please with the description? Of what timber was she built?

The bulwarks, to which I first alluded, as being different from any other vessel but a ship of war, were composed of very thick planks, three inches thick inside and out.

LORD CHIEF BARON POLLOCK. What was it?—It was teak.

The QUEEN'S ADVOCATE. What was the thickness?—The inside and the outside planks were three inches thick in the lower part, and two and a half inches thick in the upper part, and they were about two and a half feet deep. That would be from the deck to the top.

Do I understand from you that that is an unusual thickness for a merchant vessel?—Yes.

Had she any masts?—She had three masts.

Had she a propeller?—Yes, her propeller is under water.

What were her dimensions? How long was she?—Her length was one hundred and twenty-five and a half feet, and her breadth about twenty-one and a half feet. She was not particularly measured—not to the plumb line—but sufficiently near to obtain an approximation. She measured about two hundred and seventy-six tons, builder's measurement.

Did you observe her rudder?—The rudder was very strong, and a very thick formed rudder—unusually so.

Was it thicker and stronger than would be used for a merchant vessel?—It was.

You have spoken of the bulwarks; did you observe anything about the bulwarks—any arrangements made for the upper part of the bulwarks to be fitted up with anything?—I discovered several iron stanchions for hammock racks which were not put up, but there were arrangements being made for the staples to receive them. They were on board, but there were staples in the side of the vessel to receive them.

What, in your judgment, were the hammock racks for?—For hammocks.

Is that usual on board a merchant ship?—Very seldom.

Did you observe the arrangement of the deck—was there anything peculiar?—The scuttles or hatchways were not suited for a merchant vessel.

Would you tell his lordship were they or were they not of the same kind as you would find on board a man-of-war?—Yes, quite so.

They were of the same kind?—As a small class man-of-war.

Did you observe the engines and the boilers?—No, they were only partially up.

Did you observe whether there was any particular space before the boilers?—Yes.

What was that?—I could not say what that would be appropriated for; there was an entrance to it by a narrow scuttle, not sufficiently large for a hatchway, it would suit a narrow staircase.

Was this particular space before the boiler usual in merchant vessels?—Yes, in merchant vessels built for cargo.

Was it fitted for carrying cargo?—No, because there was no hatchway, there was only a narrow scuttle.

It was not fitted for carrying cargo, because there was no hatchway?—No, it was only what might be termed a narrow scuttle, which does not come under the denomination of a hatchway.

Did you observe the forecastle?—I observed that it was not fitted for a merchant's forecastle, but as I have seen yachts and small vessels of war.

Let me ask you, did you observe a cooking apparatus?—Yes, there was a cooking apparatus in the forecastle, sufficient for one hundred and fifty to two hundred people.

Was that the kind of cooking apparatus which is usual on board merchant vessels?—Only on board of passenger vessels; merchant vessels which are passenger vessels have as large and larger cooking apparatus, or ships which go on long voyages have as large.

But a common merchantman would not have so large an apparatus?—No, not a small vessel like that.

Did you observe the cabin?—Yes, I did; so much as was put up of it.

Was there anything peculiar in it?—Yes; there appeared to me to be two compartments, which would either be fitted for pantries, but they were larger than pantries are, as I have seen pursers' or officers' cabins and also the cabins of medical officers fitted.

As you have seen pursers' and medical officers' cabins fitted?—Yes; somewhat similar in their fittings.

What did you find on the starboard side of the cabin?—There were two sleeping berths, each with a bed place and drawers under the bed place.

You found two sleeping rooms on the starboard side?—Yes; they are sometimes called rooms and sometimes berths.

With beds, and drawers underneath the beds, you say?—Yes; drawers underneath the beds.

Was there a third room?—There was a third room, but it was not appropriated. I cannot say what it was.

But there was a third room?—There was a small room fitted as a pantry, which I might represent as being at the foot of the entrance of the cabin.

Was that the one you spoke of just now, or another one?—No.

You have spoken as to the starboard side; now tell me as to the port side?—I think there was one cabin with one bed place on the port side.

What sort of a room was that?—The bedroom was similar to the one on the starboard side.

What kind of a room did it appear to be destined for?—There was a room before the bedroom which did not appear to be appropriated. I could not say what that was intended for.

Was there an after cabin?—Yes; a small after cabin.

How large was that?—Nine or ten feet. I am not sure about the exact size.

Did you observe the deck beams?—They were closer together than is usually required in merchant vessels.

Now, I will ask you your opinion as a gentleman of science conversant with ship-building. I will ask you for what purpose do you conceive that the *Alexandra* was constructed.

SIR HUGH CAIRNS. I object to that; that is simply a question which may become material for the jury.

LORD CHIEF BARON POLLOCK. He has stated already that it was unfit for a merchant vessel.

THE QUEEN'S ADVOCATE. I was only going to put the question as I should to an expert in these matters.

THE LORD CHIEF BARON POLLOCK. You cannot do that, because there is no expert required. He has not come here in the character of an expert.

You are a shipbuilder?—Yes, my lord.

THE QUEEN'S ADVOCATE. Therefore he is a skilled man.

LORD CHIEF BARON POLLOCK. I can only take facts from him. What occurs to me as the proper course is to get from the witness facts.

THE QUEEN'S ADVOCATE. I have this already.

LORD CHIEF BARON POLLOCK. Then let the jury form their judgment on them. But for a man to say, in my opinion this vessel was unfitted for such and such a purpose, is usurping the functions of the jury.

THE QUEEN'S ADVOCATE. I will state the question first to your lordship. The witness need not answer it. But I was about to put this question: "Was she, in your judgment, adapted for a merchant ship, or for a vessel of war?"

LORD CHIEF BARON POLLOCK. Or for a yacht?

THE QUEEN'S ADVOCATE. Yes, my lord, or for a yacht.

LORD CHIEF BARON POLLOCK. The non-adaptation to a merchant vessel I have already.

THE QUEEN'S ADVOCATE. Then I will bow to your lordship's ruling, but I thought as an expert he might answer the question.

LORD CHIEF BARON POLLOCK. He says in one part that she was fitted for a yacht and therefore might be used as a yacht or as a small vessel of war.

Cross-examined by Mr. KARSLAKE:

Your business lately has been more in repairing vessels than building them?—Yes.

I am right in assuming that for five-and-twenty years last past you have not built a vessel at all?—I think much later than that.

Then for the last twenty years I may say that you have not built a vessel at all?—About twenty years.

LORD CHIEF BARON POLLOCK. The last vessel you built was twenty years ago?—Yes, my lord.

Mr. KARSLAKE. Where is your ship-building yard, or rather your ship-repairing yard?—In Boundary street, Liverpool.

I suppose there are great improvements being made constantly in vessels?—No; there may be alterations, but very few improvements of late years.

You say improvements, not alterations?—Alterations are not improvements.

Then the science of ship-building has stood still since you gave up building ships?—No; it stood still before I gave up building.

LORD CHIEF BARON POLLOCK. There are not many alterations that are improvements.

Mr. KARSLAKE. None, he says, my lord.

Just one word about the bulwarks of this vessel. You say they are peculiarly strong?—I do.

Does your knowledge enable you to tell me whether in a vessel of that construction it is necessary to have the bulwarks strong to strengthen it?—They have nothing to do with the strength. It has rather a tendency to weaken the vessel than to strengthen her.

Did you examine the build of the vessel below?—I did not examine her very distinctly below.

Was she in the water at the time you saw her?—In the water.

Will you tell me, as a ship-builder, whether it is not a fact that bringing up the bulwarks with additional strength added to the strength of the vessel?—No, it did not. It weakened her. It was an unnecessary weight, unless for resistance of shot.

You say that, not having seen the vessel under the water line?—This was in the water.

Did you see it below?—I say under any circumstances it would weaken her.

Did you see the vessel under the water line?—No, not externally.

Did you ever build a dispatch boat?—No.

Did you ever build a boat for the opium trade?—I have built a sailing vessel.

Not a screw steamer?—No; a sailing vessel.

You never built a screw steamer at all?—No.

They came in after your time? It is not the case that the rudder post is necessarily larger in a vessel that carries a screw than in other vessels?—No.

That is your experience?—I know it as a fact; and I have made the survey of them for government for upward of eleven years.

According to your experience in yachts, are the hammocks occasionally put up on these hammock racks?—Very rarely.

Do they ever do so?—I have known large sailing vessels fitted up somewhat similar.

And fitted with conveniences for putting the hammocks on the bulwarks?—Yes.

The sole object of that is for the purpose of greater cleanliness among the men?—Yes.

And for having the hammocks put from below to air them?—Yes, and there is another object. Their original intention was to resist shot. That was their original intention.

The object when it is used in a yacht is for the purpose of airing the hammocks of the men, is it not?—Yes.

I think you said the vessel was unfinished below?—Unfinished.

What were the dimensions of the cooking apparatus you told me of?—I did not measure it, but I should say it was for 150 or 200 men.

I should like to know the dimensions?—I have no doubt that the fireplace was somewhere about three feet nine inches, perhaps it might be from three feet and a half to four feet.

You say that in a vessel destined for carrying passengers, it is unnecessary to have the cooking apparatus of that size?—Oh, yes, some have longer ones.

Re-examined by the QUEEN'S ADVOCATE :

I did not understand what you said about the hammock racks as to their resisting shot?—The original fixing of hammocks on the hammock racks was to resist shot from musketry, which they will do.

As I understand you, that is not usual on board merchant ships?—Very rarely so.

LORD CHIEF BARON POLLOCK. Mr. Attorney General, an application has been made to me about the other cause of Bulloch. The proceedings end here to-morrow. My brother Martin will, I believe, be disengaged to-morrow, or perhaps he will have part of to-day disengaged. When I spoke to him in the morning he had some hopes of finishing in time to render assistance to the cause which now alone remains. Now, if you could dispatch some part of your army we might dispose of that at the same time; but I suppose there is no chance of its coming on to-day.

MR. KARSLAKE. I don't think the case can be tried to-day. I am for the defendant, with my friend.

MR. HAWKINS. There are two defendants.

LORD CHIEF BARON POLLOCK. Which cause are you referring to?

MR. KARSLAKE. The cause of Bulloch.

LORD CHIEF BARON POLLOCK. It cannot come on here to-day. It seems to me out of the question, so far as I can form any judgment. So far as this case is concerned it might be a *remanet*. The London sittings begin on Thursday next, and therefore, instead of keeping the witnesses and jurymen waiting after the possibility of trial has become extinct, it would be better to relieve them.

THE ATTORNEY GENERAL. I should not object to the cause being made a *remanet*, as far as I am concerned. I don't think they can be tried, and it would be very inconvenient to detach so many of our army, to follow your lordship's simile, as would be required for the operation against Bulloch.

LORD CHIEF BARON POLLOCK. We had better dismiss the jury at once.

THE ATTORNEY GENERAL. My friend, Mr. Karslake, says he does not consent to its being made a *remanet*.

MR. KARSLAKE. No; I do not. All I say is, I have not my client here, and therefore cannot consent. If your lordship makes it a *remanet* on the ground that it cannot be tried, my consent is not necessary.

LORD CHIEF BARON POLLOCK. The attorney general is *dominus litis* in all the Crown cases. I only want the consenting by the attorney general.

THE ATTORNEY GENERAL. Then I believe that the case should be made a *remanet*.

LORD CHIEF BARON POLLOCK. I am desirous of doing all homage to your power in this court. The first duty of this court is to attend to the business of the Crown. There is no doubt about it.

MR. GEORGE TEMPLE CHAPMAN called and sworn, and examined by the SOLICITOR GENERAL :

I believe you are a lieutenant in the navy of the United States?—No; I am not.

Will you have the goodness to state your profession?—I have no profession.

I think you belong to the United States?—Yes.

And have lately come to England?—Yes.

How long ago is it since you came to England?—Four months.

Were you at Liverpool about two months ago?—I was.

At that time had you business on which you wanted to see a person by the name of Captain Bulloch?—I wished to see Captain Bulloch.

Did you go anywhere to see him?—I did.

LORD CHIEF BARON POLLOCK. When did you come to Liverpool?—I came to Liverpool in the middle of March last.

THE SOLICITOR GENERAL. Where did you go to see Captain Bulloch?—To the office of Messrs. Fraser, Trenholm & Co., of Liverpool.

Was Captain Bulloch a person you were acquainted with in America?—He was.

SIR HUGH CAIRNS. Will you fix a date?

THE SOLICITOR GENERAL. Can you state with any degree of accuracy when it was that you went to the office of Messrs. Fraser, Trenholm & Co. to see Captain Bulloch?—About the 1st of April.

Did you go there more than once for that purpose?—I did.

On the first occasion when you went there, did you see Captain Bulloch?—No.

Whom did you see?—I saw a gentleman by the name of Priolean.

Did you transact business with Mr. Priolean in any character?—No; I did not transact business with him.

Did you communicate with him?—I did.

In what character did you communicate with him?—As an American.

And on his side as what?—I led him to infer that I was a secessionist.

Did he lead you to infer that he was a secessionist?

SIR HUGH CAIRNS. I do not suppose that you mean to press that question.

The SOLICITOR GENERAL. No; I will not.

SIR HUGH CAIRNS. One spy is enough.

The SOLICITOR GENERAL. Did you communicate with him as filling any character?—No.

I suppose I am not at liberty to ask what he said, but I will ask you, did you see everything in his office; over Mr. Prioleau's desk, did you see anything in his office?—I saw an English and another flag.

What was that other flag?—What the Americans call the confederate flag.

Where did you see the flag which you say was called the confederate flag?—In his front office, where his clerks were sitting.

Did you communicate with him at all about the business upon which you had come to see Captain Bulloch?—I did.

Did that business relate to Mr. Bulloch's private affairs?—Partially it did, and partly to the affairs of the confederate government.

Were you acquainted in the United States with a person named Clarence Yonge?—I was not.

Were you acquainted with any person who passed as his wife?—I met his wife in Liverpool.

Did she intrust you with any letters?—Yes.

Are those letters now in court?—That I do not know.

SIR HUGH CAIRNS. How do you make them evidence?

The SOLICITOR GENERAL. I ask whether the person who passed as Clarence Yonge's wife intrusted the witness with any letters.

SIR HUGH CAIRNS. They would not be evidence.

The ATTORNEY GENERAL. We are not putting them in evidence.

SIR HUGH CAIRNS. We must know in some shape or other, or have some indication from the Crown, as to what use is to be made of these letters, because this case has not been opened at all.

The ATTORNEY GENERAL. We simply wish at present to identify certain papers.

LORD CHIEF BARON POLLOCK. I have only got the fact that somebody's wife gave the witness some letters.

The ATTORNEY GENERAL. I will make the papers, or some of them, evidence by the next witness, Mr. Yonge.

SIR HUGH CAIRNS. You identify certain papers.

The ATTORNEY GENERAL. We only want to prove the handwriting of those letters; but, if necessary, it will be identified afterward by recalling this witness.

LORD CHIEF BARON POLLOCK. Are the letters here?

The SOLICITOR GENERAL. Yes; and the object is to prove the handwriting of the signature to those letters; some of them by this witness and some of them by another witness.

You did not see Captain Bullock upon that day, did you?—I did not.

LORD CHIEF BARON POLLOCK. How many papers are there?

The SOLICITOR GENERAL. Here they are, my lord. (The papers were handed to his lordship.)

LORD CHIEF BARON POLLOCK. Were they opened when they were given to you, or sealed?—They were delivered to me open, as they are now.

The SOLICITOR GENERAL. Did you call again?—I did.

When you called again, did you see Captain Bulloch?—Yes.

While you were at Fraser, Trenholm & Co.'s, conversing with Captain Bulloch, did you refer to these letters?—I did.

And communicated with them on the subject of them?—Yes.

Did the person you saw there admit himself to be the person referred to in these letters?—He did.

Mr. KARSLAKE. We must object to that.

SIR HUGH CAIRNS. I object to that altogether. We know nothing about what the letters are.

LORD CHIEF BARON POLLOCK. He says the persons I saw there did what?

The SOLICITOR GENERAL. Communicated with him as the person referred to in those letters. That is what the witness said, and I apprehend it is perfectly good evidence.

SIR HUGH CAIRNS. Who is the Captain Bulloch? Was Captain Bulloch there?

The SOLICITOR GENERAL. Yes; and he then communicated with Captain Bulloch on the subject of these letters, and Captain Bulloch communicated with him as the person referred to in those letters.

Mr. KARSLAKE. The last answer is, "I refer to these letters," and then there is a question objected to.

LORD CHIEF BARON POLLOCK. "Is he the person mentioned or named?"

The SOLICITOR GENERAL. The person named in the letters.

The ATTORNEY GENERAL. It would be better to let my lord see the letters, although I do not now tender them in evidence.

SIR HUGH CAIRNS. The interview, I apprehend, to which you refer is after the seizure?

The SOLICITOR GENERAL. Yes.

SIR HUGH CAIRNS. Then this is an interview after the seizure, my lord, and it is proposed to put in evidence to this extent what passed, namely, as to whether Captain Bulloch—

LORD CHIEF BARON POLLOCK. All I have got down is this: Whose wife was it?

The ATTORNEY GENERAL. The person who delivered the letters to him passed as the wife of one Clarence Yonge, who will be the next witness, or one of the next witnesses that will be called.

Mr. KARSLAKE. The person who represented herself to be the wife.

LORD CHIEF BARON POLLOCK. "They were delivered to me open, as they are now; when I called again, I saw Captain Bulloch." That is what I have on my note. (To the witness:) Did you say you referred to the letters?

The WITNESS. I did.

In saying that, do you refer to these papers?—Yes.

LORD CHIEF BARON POLLOCK. "I referred to the papers, and the person I saw there communicated with me as the person named in those letters." That is what I have got.

The SOLICITOR GENERAL. Our only object in putting the letters in, or giving any evidence about them, is to show who and what Captain Bulloch was; and as we have brought him, whatever the weight of the evidence may be, in connection with the Alexandra, I apprehend that that is a perfectly legitimate purpose.

The ATTORNEY GENERAL. It is the case I opened.

The SOLICITOR GENERAL. Yes, it was opened by my friend the attorney general, and we have given evidence accordingly.

SIR HUGH CAIRNS. Do you withdraw the question?

The SOLICITOR GENERAL. No.

SIR HUGH CAIRNS. Then, certainly, my lords, I object to the question on that footing. Here is a conversation which passed after the seizure. Nothing which takes place, then, can be evidence in this cause on a record raising the issue as to what was the effect of certain things done before the seizure. The circumstance that a gentleman spoke of himself as being the same person as the person referred to in certain papers produced to him at this time cannot, I think, be any evidence upon the issue between the parties.

LORD CHIEF BARON POLLOCK. None of the evidence I have got down affects any one at present, and I must say I do not see what there is to object to in it.

Mr. KARSLAKE. The question is put in this way; my friend has stated what he does it for.

LORD CHIEF BARON POLLOCK. You had better wait until they go one step further; at present I see nothing to object to.

Mr. MELLISH. The question is, whether he referred to him as the person mentioned in the letters, or is he going to get a statement from Bulloch as to whether he is the person referred to.

LORD CHIEF BARON POLLOCK. It does not follow that he is the person.

Mr. MELLISH. It is hearsay evidence, that can have nothing to do with the matter in question.

LORD CHIEF BARON POLLOCK. If these letters are to be read or used for any purpose, then will come the question as to the admissibility of the evidence; but at present I do not see how the question is raised.

SIR HUGH CAIRNS. Would it not be better for my friend at the proper time to make what use he can of these letters. Then we can with intelligible minds apply ourselves to the present question and this witness may be called again.

LORD CHIEF BARON POLLOCK. You may postpone your examination of this witness until you see something more of the evidence, if you wish to do that. (To the solicitor general.) Have you examined this witness sufficiently?

The SOLICITOR GENERAL. No, I have more questions to put to him.

SIR HUGH CAIRNS. It will really come to this. The statement is that this witness read certain letters to a person calling himself Captain Bulloch, and he is asked, did Captain Bulloch acknowledge that he was the person referred to in the letters?

The ATTORNEY GENERAL. If the objection is made to the form of the question, probably it might be put in a form not objectionable. I propose to put it thus: the witness has already stated that he received certain papers from a certain quarter; then the question is, did you see Captain Bulloch? I should then ask, were the letters then in your custody; and did you communicate on the subject? and nothing more.

SIR HUGH CAIRNS. He has said that.

The SOLICITOR GENERAL. I am perfectly satisfied if that is so. Then we shall go on to prove the handwriting of the letters at the proper time.

Now, Mr. Chapman, while you were at that office—that is, the office of Fraser, Trenholm & Co., with Captain Bulloch, did any one else come in?—Mr. Hamilton.

Who was Mr. Hamilton; was he a person known to you before?—Yes, he was.

What was he?—The son of General James Hamilton, of South Carolina, formerly governor of that State; and he was himself a lieutenant in the service of the United States until the year 1861.

And then what was he afterward?—He resigned his command in the service of the United States, I think, early in 1861.

SIR HUGH CAIRNS. Do you know this yourself?—I know it by his own statement.

SIR HUGH CAIRNS. That will not do.

The WITNESS. I know it by the Navy Register of the United States.

SIR HUGH CAIRNS. Confine yourself to what you have ascertained as a spy.

The SOLICITOR GENERAL. From your knowledge, are you able to say whether he was in the service of the United States at the time you saw him?—He was not.

Was he, to your knowledge, at that time in any other service?—He was.

What service?—He was in the service of ———

SIR HUGH CAIRNS. How do you know?—Because he told me.

You have been told already not to speak of what he told you.

The WITNESS. I will not.

The SOLICITOR GENERAL. In what character did he speak to you?

LORD CHIEF BARON POLLOCK. If the object is to prove that the person was in the service of the secessionists, I think it must be proved in some other way than by his merely saying so.

SIR HUGH CAIRNS. The danger is that this witness said he was himself a secessionist.

The WITNESS. I did not say I was a secessionist.

LORD CHIEF BARON POLLOCK. No; he said, "I led him to infer that I was a secessionist." He did not say he was a secessionist.

The SOLICITOR GENERAL. I understand your lordship to say that I am not at liberty to ask anything that Mr. Hamilton said to this witness; therefore I bow to your lordship's decision, and I do not ask it; but we shall call him again when we want to prove the handwriting of the letters.

The QUEEN'S ADVOCATE. We do not pledge ourselves to call him again.

The SOLICITOR GENERAL. No, I think it would be convenient that he should be cross-examined now, because I do not propose to call him again for any other purpose than the sole purpose of proving the handwriting.

LORD CHIEF BARON POLLOCK. For whatever purpose you call him again, they will have power to cross-examine him.

The SOLICITOR GENERAL. I do not pledge myself to call him again unless it may be necessary to do so.

LORD CHIEF BARON POLLOCK. If you wish the cross-examination of this witness postponed altogether, I think it would be convenient that that course should be pursued until you know something more about what this evidence means; for I confess that I do not know what it means.

SIR HUGH CAIRNS. Without pledging my friends to recall him, I think it convenient to allow the cross-examination to be proceeded with at a later period, so that we may see what the further evidence brings forth.

The ATTORNEY GENERAL. It may be convenient to recall the witness Acton merely to speak to the terms in which the vessel was spoken of by Mr. Miller, senior, in the yard.

Mr. JOSEPH ACTON called and sworn, and examined by the ATTORNEY GENERAL.

You told us yesterday you were employed in the building yard of Mr. Miller, of Liverpool, while the Alexandra was being built or was on the stocks?—Yes, sir.

During the time you were there, did you ever hear the elder Mr. Miller speak of the Alexandra, or describe her as a vessel of any particular class or kind?—No.

SIR HUGH CAIRNS. It is understood, my lord, that our objection to this evidence is taken in the same way as the rest.

LORD CHIEF BARON POLLOCK. He says, I never did.

The SOLICITOR GENERAL. Not this witness, my lord. We were stopped when the question was put to this witness.

The ATTORNEY GENERAL. I want to know whether you ever heard Mr. Miller speak of the Alexandra.

LORD CHIEF BARON POLLOCK. He said, I never did.

You said you never heard him, did you not?—No, sir.

You never heard him speak of the vessel as having any particular character?—He spoke of her as "the boat."

The ATTORNEY GENERAL. You heard him speak of her as "the boat"?—Yes.

Is that all, according to your recollection, that you heard him say of her in describing her?—Yes.

Cross-examined by SIR HUGH CAIRNS:

Had this boat any number in the yard?—I don't know that she had.

LORD CHIEF BARON POLLOCK. It is a pity we did not reserve our argument until we knew the effect of his evidence.

Mr. CLARENCE RANDOLPH YONGE called and sworn, and examined by the **ATTORNEY GENERAL**:

Are you a native of the State of Georgia in the United States?—I am.

Were you for some time paymaster on board the steamer Alabama?—I was.

Did you come from the port of Wilmington, in North Carolina, in a ship called the Annie Childs, to Liverpool?—I did.

In what month and year?—I think we left Wilmington in the month of March. We arrived in Liverpool on the 11th of March.

In what year?—In 1862.

In what employment had you been previous to leaving Wilmington?—I had been a clerk in the paymaster's office on the foreign station at Savannah, in Georgia.

Was Savannah a naval station?—Yes; it was, at that time. It never had been previously to this war.

At that time it was used as a naval station?—Yes.

For what purpose?—For the confederate forces.

You tell us you were a clerk in the paymaster's department. Do you know, from your connection with the confederate navy, who at that time was acting as secretary to that navy?—Do you mean as secretary to the confederate navy?

THE ATTORNEY GENERAL. Yes.—S. A. Mallory. He was the secretary to the confederate navy.

Before you left Savannah, did you see there a person of the name of Bulloch?—I did.

Did he, before you left Savannah, leave that place?—No.

Did he come with you?—He came with me.

LORD CHIEF BARON POLLOCK. Do you mean that he came with you to Liverpool?—He came with me as far as Queenstown, and there he left the ship and went on land; but we came over together in the same vessel.

You crossed the Atlantic together?—Yes; we did.

Do you know, from what you saw at Savannah, whether Bulloch was in any capacity in the confederate service?—I never saw Captain Bulloch's appointment, but I know that he acted for the confederate government.

In the navy, the military, or what service?—In the navy.

He acted in the confederate navy?—In the confederate navy.

LORD CHIEF BARON POLLOCK. Did he command a vessel?—No; he did not command any vessel.

THE ATTORNEY GENERAL. Did you act for a time as his secretary?—I did.

And acting as his secretary and communicating with him as your principal, do you know that he did act or not with reference to the confederate navy?—I know that he acted, because I saw all the letters of the secretary of the navy to him, and his replies to those letters.

Was it part of your business to make copies of those various communications?—I copied all of his letters; there may have been a single letter which I did not copy.

But it was your business to do so?—Yes; it was my business to do so.

Do you remember to what place the letters to Mr. Mallory were addressed?—Richmond, Virginia.

That is the capital of the Confederate States?—Yes; the capital of the Confederate States.

Then, in the course of that employment, did you become acquainted not only with the handwriting of Captain Bulloch, but with the handwriting of the secretary of the navy?—I saw his signature to the letters.

Do you mean that you saw Mallory's signature?—Yes; Mallory's signature.

THE ATTORNEY GENERAL. Will your lordship hand me those letters? (The letters were handed to the learned counsel.)

You said that Captain Bulloch acted with reference to the navy. Did he act in any particular character, as commanding a ship, or as paymaster?

LORD CHIEF BARON POLLOCK. He did not command a vessel?—He did not command a vessel, nor did he act as paymaster direct. There was no fund placed in his hand to pay to any officer.

In what character did he act, then, as long as he was at Savannah?—I cannot say in what capacity he was acting there. He directed the movements generally of the steamer Fingal, as she was lying there ready to come out.

Was that a war steamer?—No; she was a merchant vessel.

Do you remember about what time it was when you left Savannah with Captain Bulloch?—I do; it was on the 22d or the 23d of January; about that time.

In 1862?—We left Savannah in 1862.

I think you left in the ship, the name of which you have given us as Annie Childs?—Not from Savannah; we went from Savannah to Wilmington.

From Savannah did you sail to Wilmington?—No; we went by land.

Did you there take ship?—We left Wilmington in the ship.

In the Annie Childs?—Yes.

You have told us about when you arrived in Liverpool; were there any passengers that you remember in particular on board besides yourself and Captain Bulloch?—There were three others.

Who were they?—John Low, Eugene Maffit, and Edward M. Anderson.

Can you tell us how the Mr. Low that you have mentioned was employed, whether he was in any service?—He had received an appointment from the confederate navy.

SIR HUGH CAIRNS. Do you know what appointment he had received?—Yes, I know.

How do you know?—By having his orders in my possession.

SIR HUGH CAIRNS. That will not do.

The ATTORNEY GENERAL. What do you mean by orders?—Orders from the secretary of the navy, and also a copy of his appointment.

While you were secretary to Captain Bulloch, at Savannah, had you communications with Mr. Low?—Daily.

At the office?—Not at the office. I used to see him on board of the vessel.

What vessel?—The steamer Fingal; the vessel he must have come out in. Captain Bulloch had no command at Savannah whatever.

The Fingal was a vessel Captain Bulloch was endeavoring to get out?—Captain Anderson was in command of the vessel; Captain Bulloch's orders were to return to Liverpool.

SIR HUGH CAIRNS. What did you know about Captain Bulloch's orders?

The ATTORNEY GENERAL. Did you hear Captain Bulloch give orders with reference to this ship?—He had the principal direction of this vessel.

Did you hear him give orders?—To Captain Anderson?

Yes.—Yes.

And to Low?—Not to Low.

What orders or directions, if any, did you hear Captain Bulloch give to Captain Anderson?

SIR HUGH CAIRNS. I object to that question; we must not have statements made by Captain Bulloch with respect to some ship called the Fingal, and some person called Anderson, as to which ship and which person we have not heard anything yet which makes their presence relevant to this inquiry.

The ATTORNEY GENERAL. I will show that Captain Bulloch was in Savannah in an official character employed by the confederate government, by the witness who was his secretary, and must know.

LORD CHIEF BARON POLLOCK. This is a matter for cross-examination.

The ATTORNEY GENERAL. He must know it.

When he was at Savannah, and you were acting as his secretary, did you hear him give any orders to Low with reference to his ship there?—Not with regard to any ship.

Do you know how Low is employed?—He is now a lieutenant on board the confederate steamer Alabama.

Do you know it from having seen him there?—Yes; I know it from having seen him there.

LORD CHIEF BARON POLLOCK. On board the Alabama?—Yes.

The ATTORNEY GENERAL. He is now lieutenant on board the Alabama?—Yes.

When did you see Low on board the Alabama?—I left him on the Alabama on the 25th January last.

In this year?—Yes; in this year.

I will ask you at once the question; you were on board the Alabama?—Yes.

Was that vessel at the time you were on board of her a vessel of war, sailing the flag of the Confederate States?—She was, and she sailed under a good many flags.

Was she commanded by an officer in the confederate navy?—Yes.

Captain Semmes?—Captain Raphael Semmes.

Possibly; I do not know it so; but did you ever know Lieutenant Low acting in any naval and military capacity before you saw him on the Alabama?—I know that he went out in the Oreto to Nassau, and I have seen him when he was a volunteer in the land service.

Is that since the war?—Since the war.

In what service?—Which of the two services?—In the confederate service.

You have known him serving as a lancer in that service?—Yes; I have known him in the confederate service.

There is another person whose name you mentioned as having come to Liverpool in the Annie Childs—Mr. Maffit; had you known a Mr. Maffit before you commenced the voyage from Wilmington to Liverpool?—I did.

Had you or had you not known him as serving in any fleet or army on either of the sides at war?—Yes, I have known him in both; that is, acting as a volunteer in one of the batteries at the fight at Port Royal.

Do I understand you to say that he was in both services?—At one time he was serving as a volunteer in the land service.

Of which service?—In the confederate; and after that he left his appointment as acting midshipman in the Confederate States navy, and served on board vessels in that situation.

I thought you said he had served at one time in the United States?—No.

You mean that he served in the two services, the military and the navy, of the Confederate States?—Yes.

Did you say he served in the *lancers* or in the land service?—In the land service.

When he came home with you was he in the land service or in the naval service?—

When he came home with me?

When he came home to Liverpool with you?—He was then in the navy.

You mentioned another person as coming in the *Annie Childs* of the name of Anderson?—Yes.

Had you known him before you commenced the voyage?—I had.

Had you known him serving in the land service or the naval service of the confederates?—I have known him in the naval service of the confederates.

In the naval service only?—Yes.

And what was his rank in the navy?—Acting midshipman.

At the time when he came to Liverpool?—At the time he came over previously.

I ask you about the present employment, or rather the employment when you were in the *Alabama*, of Mr. Low. Was either of the other gentlemen serving in the *Alabama*?—They are both serving on board the *Alabama*.

That is to say, Mr. Maffit and Mr. Anderson?—Yes.

Were all serving in the *Alabama* when you left that ship?—All were serving in the *Alabama* when I left that ship.

On your arrival at Liverpool, with whom, if with any one, did you first communicate?—Do you mean last year?

I mean when you came to Liverpool from Wilmington, in the month of March, 1862.—I was in communication all the time with Captain Bulloch.

You came with Captain Bulloch?—I came with Captain Bulloch.

And did you take counsel with him; and did he direct generally what you should do?—Yes, he did.

You acted by his direction?—I acted under his directions.

Shortly after your arrival at Liverpool, did Captain Bulloch introduce you to any mercantile firm there?—Yes; to the firm of Fraser, Trenholm & Co.

You may as well tell us at once who that firm consisted of. What were the names of the gentlemen composing that firm?—There were Mr. Prioleau, Mr. Welsman, Mr. Armstrong, and Mr. Bushby.

Who did you understand were the principal members of the firm?—I understood—

SIR HUGH CAIRNS. That will not do; do not tell us what you understood.

THE ATTORNEY GENERAL. Did you communicate with the firm of Fraser, Trenholm & Co.?—I did.

With whom did you communicate as members of the firm?—I had very little to do with them; Mr. Armstrong was the principal person that I had any business with.

Do you know what his employment at the office was?

LORD CHIEF BARON POLLOCK. Who are you speaking of?—Mr. Armstrong.

He was the principal person you saw?—No; he was the person with whom I conducted my portion of the business.

THE ATTORNEY GENERAL. You did see Mr. Prioleau and Mr. Welsman?—Yes.

As members of the firm?—Yes.

LORD CHIEF BARON POLLOCK. The members of a firm are got at by showing business done with the firm.

THE ATTORNEY GENERAL. We will give strict evidence of that if it be called for.

LORD CHIEF BARON POLLOCK. This certainly does not prove them to be members of the firm; it merely proves that he went to the office, and some one said he was so-and-so.

THE ATTORNEY GENERAL. I will ask my friends whether they require evidence to be given of who the constituent members of that firm are?

SIR HUGH CAIRNS. Some witness has already said that Prioleau and Welsman were partners in that firm.

THE ATTORNEY GENERAL. It is upon your lordship's note that the two gentlemen named are members of that firm.

LORD CHIEF BARON POLLOCK. Welsman and Prioleau, you mean?

THE ATTORNEY GENERAL. Yes; I think that is so.

SIR HUGH CAIRNS. You will find it on your lordship's note.

LORD CHIEF BARON POLLOCK. Yes; it is.

THE ATTORNEY GENERAL. Therefore I will simply ask this witness, did you see those gentlemen at the office?—THE WITNESS. Nearly every day.

Did you see the flag that has been spoken of?—I do not recollect seeing any flags.

You say you were introduced to those persons; who introduced you?—I was introduced by Captain Bulloch.

LORD CHIEF BARON POLLOCK. He said that before; he says "Captain Bulloch introduced me."

SIR HUGH CAIRNS. Will you ask him, if you please, was this on the occasion of his first or second visit to England?

The ATTORNEY GENERAL. I ask you now about what took place after you came from Wilmington to Liverpool, arriving in March, 1862; do you understand that I am asking you about that period?—Yes.

Did you see Captain Bulloch there, from time to time, at the office of Fraser, Trenholm & Co. ?—I did.

I thought you said —; I want to be certain that you yourself were there nearly every day ?—Nearly every day.

By the direction of Captain Bulloch ?—Yes; I had to meet him there sometimes.

Were these meetings between Captain Bulloch and yourself on matters of business? I will not at present ask what the business was, but I merely confine myself to the question, were your meetings upon matters of business?—They were frequently; that was not always the case.

But principally?—They were principally on business.

On the business on which you had come over?—Yes.

Whatever that was, I do not ask you now. Do you remember whether there was a room in the office or house of business of Fraser, Trenholm & Co., particularly used by Captain Bulloch?—There was a room used by them, the only room in which we wrote our letters and transacted our business generally.

It was used, you say, by them?—By Captain Bulloch, and by Major Hughes, a gentleman of the war department.

Then there was one room used particularly by Captain Bulloch for his business?—Yes.

Was that the room—I presume it was—in which you transacted business with Captain Bulloch?—It was.

Besides Captain Bulloch and yourself, were there other gentlemen transacting business in that office?—There were.

From time to time?—Occasionally.

Was one of those gentlemen a gentleman of the name of Hughes, of the confederate army.

SIR HUGH CAIRNS. How do you know he was of the confederate army?—From having met him with Captain Bulloch at his house, from knowing his letters, from seeing him write his letters in the place I am telling you about, and from the general conversation that passed in my presence.

SIR HUGH CAIRNS. That is all?—Yes.

The ATTORNEY GENERAL. But as far as he acted and interfered, did he act and interfere as a military officer of the Confederate States?

LORD CHIEF BARON POLLOCK. There is no military business at Liverpool.

The ATTORNEY GENERAL. I am not sure that there was not.

LORD CHIEF BARON POLLOCK. There was no fighting there, at any rate.

The ATTORNEY GENERAL. I do not suppose there was; but at any rate, if there was it was all on one side.

However, you called him Major Hughes; was that the name by which he was known?—When I first came to Liverpool he was Captain Hughes, but he was afterward promoted to the rank of Major Hughes while he was here in England.

You can tell us whether he was a federal or a confederate?—He was a confederate.

And as far as you know were the various people who went to this room and transacted business of the same side?—Generally, they were.

The confederate side?—Yes.

In addition to the gentlemen you have mentioned, was there a gentleman of the name of Sinclair who used to come backward and forward?—There was.

What was he called?—Lieutenant Sinclair.

SIR HUGH CAIRNS. He was called a lieutenant?—He was simply called Mr. Sinclair there. No title at all was given to anybody.

The ATTORNEY GENERAL. You mentioned the word "lieutenant;" did you know him in any capacity before this time?—I never saw his appointment or his orders; I knew him in the Confederate States as an officer of the confederate navy.

You knew him there acting as a confederate officer?—I knew he was a confederate; he was not in any business.

He was addressed as an officer there?—Yes.

What was he called in England?—In the Confederate States, where I knew him, we addressed him as Captain Sinclair.

You can tell us whether he was a soldier or a naval man?—He was a naval officer.

Will you tell me what was the nature of the business which you and the other gentlemen whose names you have mentioned transacted from time to time in this office; what else did you do?

SIR HUGH CAIRNS. I object to that evidence; as to what the business transaction is,

or as to the nature of the office; that must bring us a full detail of everything that passed on both sides, which must be entirely irrelevant to the issue of this cause.

THE ATTORNEY GENERAL. The object is to show the character of these gentlemen, and you cannot show the nature of their character better than by showing the nature of the business.

SIR HUGH CAIRNS. Do you mean the way in which the business was transacted, as to whether they were honest or dishonest men?

THE ATTORNEY GENERAL. No; but generally what was the nature of the business in which these gentlemen were engaged.

LORD CHIEF BARON POLLOCK. I do not see how that bears on the present inquiry. You see what they did there seems to be a matter of no sort of importance. What they did elsewhere may be very important. But what they did there, whether they were forming conspiracies against the United States, or whatever it might be, is of no importance; the only matter that can be material is, what they did somewhere else.

THE ATTORNEY GENERAL. Surely I may ask generally with reference to what in general terms they communicated. I do not want to put words into the gentlemen's mouth, but cannot I ask to what their communications had reference?

LORD CHIEF BARON POLLOCK. I do not see how that can be of any importance whatever.

THE ATTORNEY GENERAL. Did they communicate with reference to ships, or to military stores, or to what?

LORD CHIEF BARON POLLOCK. That would be only their conversation among themselves, or writing letters to other people, or consulting about what they should do, all of which would be of no sort of importance, unless it resulted in something which appeared somewhere else.

THE ATTORNEY GENERAL. Of course we shall follow this up, but I want first to impress a particular character on these people.

LORD CHIEF BARON POLLOCK. I think you cannot do that unless by showing what was done elsewhere.

THE ATTORNEY GENERAL. Although it is called conversation, business transactions consist merely in conversation passing between one person and another. You ask a person, "Did you transact any business?" He replies, "I did." You ask him what was the nature of that business. Then, perhaps, he would say, "The purchase of goods," or whatever it might be.

LORD CHIEF BARON POLLOCK. All of which has no effect on the present inquiry. It is utterly immaterial and irrelevant, except it produced effect somewhere else. If they talked together, or any one gave a direction to send a message, did the message go, and what was it when it came? If they wrote letters, to whom were the letters sent, and what were the contents of those letters? But the character these witnesses might give of the nature of the business is wholly unimportant. After all, the answer might be nothing more than this, "We used to consider what should be done with money and ships, and what orders should be given, and about getting men," and so on. But that would not be evidence at all, you know.

THE ATTORNEY GENERAL. I will ask the question in another shape, and see what the answer comes to. You say you met on business at the office?—Yes.

Did you transact business of any kind in the office?—Yes.

What did you do?

SIR HUGH CAIRNS. No; that will not do. We cannot have that.

LORD CHIEF BARON POLLOCK. I do not see how anything that he did there in that room is of the slightest importance, unless something comes of it out of that room.

THE ATTORNEY GENERAL. Of course my object is very plain; it is to attach to certain persons the character of agents for the confederate government.

LORD CHIEF BARON POLLOCK. You must do that by showing, not conversations among themselves, but that they were acting as agents in the outer world.

THE ATTORNEY GENERAL. That is the question I am putting. I meant to direct the witness's attention to acts done as distinct from mere conversations or correspondence.

LORD CHIEF BARON POLLOCK. Those acts must appear by something that took place out of the room. I think that is all that you can give evidence of.

THE ATTORNEY GENERAL. I will do that.

Will you tell us, you having communications among yourselves on matters of business, whether, to your knowledge, anything was done out of the office of Fraser, Trenholm & Co. in pursuance of those directions, or in consequence of those directions?

SIR HUGH CAIRNS. Was anything done by you in their presence? Let that question be put first.

THE ATTORNEY GENERAL. Was anything done, do you recollect anything being done or orders being given, out of the office of Fraser, Trenholm & Co. in connection with what you discussed?

SIR HUGH CAIRNS. Put the question simply, Was anything done in your presence?

LORD CHIEF BARON POLLOCK. That could only be done by a message, of which mes-

sage you ought to give evidence, or by letter, which letter you ought to produce, or by some personal direction.

The ATTORNEY GENERAL. I asked the witness, Did this occur to your own knowledge?

SIR HUGH CAIRNS. It is so much too vague; the difficulty is in knowing what it might lead to. My friend must ask, Was any particular thing done by you? Where was it done? When was it done? So that we may understand what he is leading to.

The ATTORNEY GENERAL. Was anything done by yourself out of the office?—As the result of what I was directed to do in the office, is your question, as I understand it.

The ATTORNEY GENERAL. Yes; that is my question.

LORD CHIEF BARON POLLOCK. Was anything done by you out of the office?—No; I have received money in the office that I have paid out aboard the Alabama.

The ATTORNEY GENERAL. We had better come to that at once. This witness had a particular character.

When you came to Liverpool you had no particular commission or appointment?—My appointment was not made out when I arrived in England.

Now I speak more of your appointment; tell me how long did you remain in Liverpool?—From the 11th of March to the 29th of July, 1862.

Did you then leave Liverpool?—I left Liverpool.

In what vessel?—In the Alabama; it was called the Eurica.

Or 290 it was sometimes called, was it not?—She was sometimes spoken of as the 290.

It was the same vessel?—The same vessel.

It was the vessel built by Messrs. Laird, at Birkenhead?—Yes; by Messrs. Laird.

When that vessel left she had no armament on board?—Nothing at all in the way of armament.

While you were on her did she receive her armament and hoist the confederate flag and pass to the command of Captain Semmes as a ship of war?—She did.

All that you saw?—I saw it.

Do you recollect who went on the Alabama besides yourself?—Do you mean from Liverpool?

Yes.—Lieutenant Low.

Who else?—He is the only one on board of her now—that is, in the navy.

Do you recollect other officers being brought to join the Alabama in another vessel?—I do.

What was the name of that vessel?—The Bahama.

Who were the officers?—Raphael Semmes, Captain J. Mackintosh, Lieutenant R. F. Armstrong, Lieutenant Wilson, and Arthur Sinclair.

Did Captain Bulloch or not go out in the Bahama?—Yes; but not as an officer of the Alabama. I omitted the name of one gentleman who went out from Liverpool, a gentleman appointed in Liverpool as surgeon; his name was Llewellyn, and he sailed also in the Alabama.

Captain Bulloch went out and returned in the Bahama?—Yes.

Leaving Captain Semmes and other officers in the Alabama?—Yes.

Before you left Liverpool in the Alabama were you employed as paymaster?—I acted in that capacity.

You acted as paymaster in the confederate navy?—In the confederate navy.

We will see what you did. You continued to act in that capacity for some time?—

During the entire time I was in Liverpool I acted in that capacity.

And you made payments in that capacity?—Yes; I continued to make payments in that capacity.

Is the paper which I now hand to you the appointment which you received and under which you acted?

SIR HUGH CAIRNS. Wait a moment; do not answer that question. Let us see what it is.

The ATTORNEY GENERAL. I will ask him first: Look at that paper and tell me is that the signature of the gentleman you have described as Captain Bulloch?—That is it.

Was that paper so signed delivered to you before you began to make these payments?—No; it was not.

When was it delivered to you?—The appointment was made out—

Mr. KARSLAKE. Do not call it an appointment.

The ATTORNEY GENERAL. You say you made these payments during all the time you were in Liverpool?—Yes.

But how long had you been in Liverpool before you got that paper?—This paper was given to me on board the Alabama the day she left Liverpool.

LORD CHIEF BARON POLLOCK. You got it just as you were going away?—Just after we left; I think we were away at the time in Moelfra Bay.

While you acted as paymaster in Liverpool, as I understand you, you had not any writing which authorized you to do so?—I had no writing.

* Vide warrant appointing C. R. Yonge acting assistant paymaster of the Alabama, post.

But Captain Bulloch was there in Liverpool, who knew of the payments that you were making from time to time?—He did. That is the only writing in which my name appears as paymaster.

SIR HUGH CAIRNS. Never mind about that.

THE ATTORNEY GENERAL. You say you acted as paymaster?—Yes.

You have told us in what way; although you had no writing, were there any directions or orders given to you to act in that capacity?—There were.

By whom?—By Captain Bulloch.

But they were not written?—Not written.

LORD CHIEF BARON POLLOCK. Not in writing?—Not in writing to act in the capacity of paymaster.

You made payments to various persons; were those persons in the confederate service to whom you made these payments?—I have made payments to the officers. I know the persons I made the payments to were in the confederate navy.

THE ATTORNEY GENERAL. I will ask him about the particular individual about whom he knows.

You were, whether rightly or wrongly, as I understand you, making these payments as paymaster in the confederate service?—I was.

Who supplied the money?—I made requisitions to Captain Bulloch for the amounts, and I received an order from him to pay the moneys, either by check or money itself.

That was the way in which you received the money?—Yes.

LORD CHIEF BARON POLLOCK. How did you get the money?—I was to make requisitions for the amount I required at the end of each month.

From Captain Bulloch?—From Captain Bulloch.

LORD CHIEF BARON. How did he pay you?—He would give me an order on Messrs. Fraser, Trenholm & Co.

MR. ATTORNEY GENERAL. You say that the money was furnished by Messrs. Fraser, Trenholm & Co.; on the occasions of the money being furnished, have you delivered to them any order or anything of the kind?—I delivered Captain Bulloch's order.

And on receiving the money did you leave these orders with Messrs. Fraser, Trenholm & Co.?—I have done so.

MR. ATTORNEY GENERAL. Those gentlemen have had a *subpoena duces* to produce those orders, and I now ask for their production.

Adjourned for a quarter of an hour and resumed.

MR. ATTORNEY GENERAL. You have told us that you left the orders, when you got the money, with Messrs. Fraser, Trenholm & Co.?—Yes.

I ask those gentlemen, or any one for them, to produce those orders.

SIR HUGH CAIRNS. I am told that Mr. Hamel has got them.

MR. ATTORNEY GENERAL. It is sufficient if they will be here; perhaps I may go on with the witness without stopping for the orders.

LORD CHIEF BARON. The orders will be produced?

MR. ATTORNEY GENERAL. I understand they will, my lord.

SIR HUGH CAIRNS. I am told so, my lord. I am told that the agent who has them in hand will give them to Mr. Hamel.

(Some documents were handed in.)

MR. ATTORNEY GENERAL. These are produced from Messrs. Fraser, Trenholm & Co. I do not know whether we are to take it that these are all.

LORD CHIEF BARON. Are they some?

MR. ATTORNEY GENERAL. I was going to ask, are they either all or are they some?

LORD CHIEF BARON. You can put it first are they some, and then are they all?

MR. ATTORNEY GENERAL. Are those the orders of which you speak? Just look at them in succession.

LORD CHIEF BARON. How many are there?

WITNESS. These are about all the orders.

MR. ATTORNEY GENERAL. You think those were about all?—Yes.

You said they were monthly?—Yes.

Then they probably would be all?—Yes.

The signature to them I take for granted is that of Captain Bulloch, as it professes to be?—It is that of Captain Bulloch.

Just before we read these, will you tell me in what way you put before Messrs. Trenholm & Co. the amount of cash, or rather before Captain Bulloch, (I suppose it would be,) the amount of cash you would require; what was the course that you pursued between Captain Bulloch and yourself?

LORD CHIEF BARON. He says I made a requisition to Captain Bulloch, and it was paid by the order of Messrs. Fraser, Trenholm & Co.

WITNESS. I used to go to Captain Bulloch and tell him the amount of money that I required. I used to specify it.

Mr. ATTORNEY GENERAL. Had you anything which you called pay-rolls?—Yes; I had pay-rolls.

What became of them?—They are on board the Alabama. I think it possible that there may be one still in the office of Messrs. Fraser.

You stated to Captain Bulloch what you required, and then the orders came from Fraser, Trenholm & Co.?—Yes.

They seem to be all in the same form?—Yes; very little difference. (A paper was delivered in and read as follows:) Liverpool, 1st of May, 1862; addressed Fraser, Trenholm & Co.; signed James D. Bulloch. "Pay to the order of C. R. Yonge, assistant paymaster, on account of officers' pay, £40 3s. 9d."

LORD CHIEF BARON. One is for £40 3s. 9d., another £23⁶ 2s. 6d., another £41 10s. 3d., another £203 8s. 1d., and another £154 17s. 6d. I have the advantage of now knowing who Fraser, Trenholm & Co. are, which I have not heard of to this moment; there is a very considerable difficulty in learning the proper names of members of a firm, particularly when as sometimes they are mixed up in the name with the initial letter, such as M. Anderson, which may be Manderson, or anything else.

Mr. ATTORNEY GENERAL. Do you remember who paid you the cash?—I received it from different persons in the office.

In the office?—Yes.

The QUEEN'S ADVOCATE. In Messrs. Fraser's office?—Yes.

Mr. ATTORNEY GENERAL. By these orders it would appear that you were to receive the money for officers' pay; did you pay the money to officers under these orders?—I did.

Can you mention any particular person to whom you paid money as being officers' pay?—Yes; I have paid Captain Bulloch money.

That is one.—I have paid to Captain Bulloch money; to John Low money; to Edward M. Anderson money; to Eugene Maffitt money; and to Irvine S. Bulloch I have paid money.

LORD CHIEF BARON. Is that another Bulloch?—Yes; it is a brother of Captain Bulloch; and to William H. Sinclair.

Mr. ATTORNEY GENERAL. The person you mentioned?—No; it is a son of the person who was mentioned. I have paid money to T. C. Cuddie, and I have paid John R. Hamilton money.

You have paid officers' pay to them?—I have.

When you say you paid officers' pay to Hamilton and to those others, was the pay the pay of officers in the army or in the navy?—It was pay of officers in the navy.

Altogether?—Altogether.

I suppose the pay varied according to the rank of the officer?—According to the rank.

What pay in rank did you make to Mr. Hamilton?—As a lieutenant.

A lieutenant in the navy?—The pay of a lieutenant in the navy, according to the length of time they had been in the navy.

I do not know whether you happen to have known Mr. Hamilton before?—I did.

As what?—As lieutenant.

In the confederate navy?—Yes; in the confederate navy.

Was that in a confederate State?—In the Confederate States.

Did you happen to know when Mr. Hamilton came to England?

Mr. KARSLAKE. From your own knowledge?—I know within a day or two.

Mr. ATTORNEY GENERAL. Did he come before you or after you?—He came some time after me.

You were in Liverpool, I suppose, when he arrived?—Yes; or in Wavertree at least.

Did you leave Mr. Hamilton in Liverpool when you went out with the Alabama?—I did.

As far as you know has he continued in Liverpool since that time?—I do not know.

Probably you have not seen him since you went out?—I have not seen him from that time to the present.

Besides the pay of the officers you have mentioned, did you make payments to other persons under the rank of non-commissioned officers?

LORD CHIEF BARON. I do not see, Mr. Attorney General, what is the use of going into all these details of the paymaster's office.

Mr. ATTORNEY GENERAL. You have told us that you joined the Alabama; in what capacity did you serve on board that ship?

LORD CHIEF BARON. He has said as paymaster.

Mr. ATTORNEY GENERAL. You were still paymaster?—I was paymaster of the Alabama.

And acted as paymaster until you left that vessel?—Until such time as I left the vessel.

Before you began to act as paymaster, or about the time, on the Alabama, did you receive a written authority? Just look at that, (handing a paper to the witness;) first of all, do you know that paper?—I do.

Does it bear the signature of Captain Bulloch?—It does.

Did you receive that paper from any one?—From Captain James D. Bulloch.

You received that paper from Captain Bulloch?—I did.

At what place were you when you received that paper?—I judge from the date of it we were lying at Moelfra Bay, on the Welsh coast.

Were you on board the ship at that time?—I was on board the ship at that time.

Having received that, and in consequence of that, did you continue to act until you left the ship in the capacity of paymaster?—I did.

And did the duties of paymaster?—I did.

MR. ATTORNEY GENERAL. I propose to read this, it professes to be a commission or authority to this witness from Captain Bulloch to act as paymaster, and upon which he acted.

SIR HUGH CAIRNS. I apprehend, my lord, it is entirely *res inter alios acta*. The fact is already elicited from the witness that he acted as paymaster on board the Alabama, but the contents of that document, and that document itself, as evidence in the cause, I apprehend, are not receivable.

MR. ATTORNEY GENERAL. It is not put forward as a writing, but as a commission; it is an act.

LORD CHIEF BARON. The objection is that it is *ouder voor to over*. If the inquiry was whether Mr. Bulloch had acted as a confederate agent it would be evidence.

MR. ATTORNEY GENERAL. That is a very material question in this case. I propose to prove that Captain Bulloch certainly did act as a confederate agent, and to prove that I tender this in evidence, not as a paper for the purpose of a statement to be proved from it, but as the act of Captain Bulloch. Without taking any exception, my learned friends permitted me to prove before, with reference to this gentleman, his acting as a paymaster at Liverpool, and that he did so by the directions of Captain Bulloch. This is only a written order for a person to act in the same way on board the ship.

SIR HUGH CAIRNS. Perhaps I may save trouble. I have looked at it, and I have no objections to its being read.

(The same was delivered in and read.)

THE ASSOCIATE. It is dated Liverpool, 30th July, 1862; it is addressed to Clarence R. Yonge, acting assistant paymaster, C. S. N.; it is signed James D. Bulloch, commander. "Sir: By virtue of the authority granted me by the honorable S. R. Mallory, secretary of the navy of the Confederate States, I hereby appoint you as acting assistant paymaster, this appointment to date from the 21st day of December, 1861."

MR. ATTORNEY GENERAL. What is the date of that commission, as they call it.

LORD CHIEF BARON. The first date is Liverpool, 30th July, 1862, and then the last date is "Acting assistant paymaster Yonge, reported to me duly on board the Confederate States steamer Alabama, near the island of Tercera, on the 24th of August, 1862," that is the only other date.

MR. ATTORNEY GENERAL. Is the signature to that paper also in the hand writing of Captain Bulloch? (handing a paper to the witness.)—That is.

LORD CHIEF BARON. That paper must be handed to me that I may identify it.

MR. ATTORNEY GENERAL. Without asking the terms of that letter, or putting it in now, is that a letter of instructions?—It is; I did not notice it particularly; I think it is. I had a letter of instructions; if you will allow me to look at it I will say whether it is or not.

Did you receive a letter of instructions which you believed to be that, at the time you received the commission?—I received the letter of instructions previously.

It seems to be dated two days earlier?—I received it then; it was just before.

A letter of instructions as paymaster?—Yes.

From Captain Bulloch?—From Captain Bulloch.

When you got the commission, did you take those two together as your directions and authority?—I did.

I propose to read these instructions. It is a letter of instructions to the officer how he is to act.

SIR HUGH CAIRNS. Certainly I object to that. On the former occasion I withdrew the objection because, it having been verbally stated that he had received the appointment of paymaster, it seemed very immaterial whether a written statement to the same effect was superadded or not. I had not the least idea of what these may be; but all the instructions in the world communicated verbally or by writing to the witness would not have been evidence upon this case. If Captain Bulloch told the witness to do this or that on board the Alabama, that is no evidence as regards the Alexandria. Instructions given on board the Alabama by Captain Bulloch, or by anybody else, must be, I apprehend, about as irrelevant evidence with regard to the Alexandria and the acts of parties upon the record with regard to her as could be conceived.

MR. ATTORNEY GENERAL. I have put this forward, and I apprehend rightly, as really a part of the commission of this witness to act as paymaster, which has been read already and without objection. It merely describes the office or the function which he had to discharge. He tells us that he received, at or about the same time as the com-

* Vide instructions to C. R. Yonge as acting assistant paymaster of the Alabama, post

mission, (the difference of two days, I think, will not be relied on as making any difference,) written directions as to what he should do. I propose to put these in evidence. I apprehend that they are evidence upon the same ground as an act—an act giving directions by a person in authority to the witness—is evidence upon the same ground as the commission was admitted.

LORD CHIEF BARON. I am of opinion that the letter cannot be read as evidence in this cause. The question here is whether the vessel, the *Alexandra*, was forfeited, and properly therefore seized, in the month, I think, of April in this year. And I think that cannot at all depend upon what the nature of the instructions were that Captain Bulloch thought proper to address to the paymaster of the *Alabama*.

MR. ATTORNEY GENERAL. I was only tendering that as evidence to support the character, but I will not press the question after your lordship's opinion. (To the witness.) While you were on board the *Alabama* I believe you saw and actually witnessed the acts of war by the crew in command of that vessel upon ships of the United States, the *federals*!—I did.

You saw vessels captured?—I did.

And destroyed?—Yes.

You saw, in fact, a great number of ships destroyed—it is not material how many—we prove it to be a vessel of war. You saw twenty-three vessels destroyed, I think?

SIR HUGH CAIRNS. I have not been objecting to this, because it is a vessel of war; everybody knows that the *Alabama* is a vessel of war.

LORD CHIEF BARON. We all know that the *Alabama* is a vessel of war; with what success is not material.

MR. ATTORNEY GENERAL. (To the witness.) When you had the guns on board of that ship of course you would see. Did they bear the name of any maker?—I am not positive that they did; but I am under the impression that—

SIR HUGH CAIRNS. You must not tell us that.

MR. ATTORNEY GENERAL. If you do not distinctly recollect so as to pledge your oath I will not ask the question. You cannot pledge your oath?—No, I cannot.

Besides the papers spoken of, and which are produced, were there any allotment notes that you know of given to the friends and wives and families of the crew of the *Alabama*?—There were.

At Liverpool?—No; those allotment tickets were made out at the Island of Terceira after the ship went into harbor. There were a lot of notes that were made out and signed.

SIR HUGH CAIRNS. Never mind that.

MR. ATTORNEY GENERAL. Do you happen to know yourself, one way or the other, of any of those allotment notes going to Messrs. Fraser, Trenholm and Company?—I do. Do I know of their having been received there by them?

Yes.—No; I cannot say that they were received by them. I know that they were made to be paid by them.

SIR HUGH CAIRNS. You must not go on.

MR. ATTORNEY GENERAL. Is Herring here, the policeman, and Mrs. Parkinson, the wife of Richard Parkinson?

(Mr. Herring and Mrs. Parkinson were called.)

MR. ATTORNEY GENERAL. I shall produce the documents, I hope, by and by. (To the witness.) Do you remember a person of the name of Herring?—I do not.

Or Mrs. Parkinson?—Mrs. Parkinson.

You say some of the allotment notes were signed by you; I think you said that?—They were all signed by me.

Did they bear another signature as well?—They did.

Whose?—Captain Semmes's.

He was the commander of the ship?—He was the commander of the *Alabama*.

SIR HUGH CAIRNS. I think you should not call them allotment notes.

MR. ATTORNEY GENERAL. When you speak of allotment notes, you mean the papers given to Mrs. Parkinson.

LORD CHIEF BARON. It was the practice that the allotment notes should be signed by the commander and by the paymaster?

MR. ATTORNEY GENERAL. Yes, and I hope to put two of them in evidence. (To the witness.) When you call them allotment notes, do you mean the sort of document that was given to Mrs. Parkinson?—Yes.

LORD CHIEF BARON. That is what may be called an order?

MR. ATTORNEY GENERAL. I hope to put in two of them; I wish to identify the one which will be put in by Mrs. Parkinson as what he spoke of as an allotment note. (To the witness.) You mentioned the *Bahama*, did not you?—I did.

As coming out to the *Alabama*; I forget whether you said who commanded that vessel?—She was at that time under the command of Captain Tessier.

Besides the *Bahama*, was there another vessel that came out with materials for the *Alabama*?—There was.

What was her name?—The barque *Agrippina*.

Were any goods of any kind, or stores of any kind, transhipped from each of those ships to the Alabama?—There were.

From each of them?—From each of them.

What were they, guns or naval stores?—They were munitions of war.

For the armament of the Alabama?—For the armament of the Alabama.

Had you any means of knowing who sent out this armament or any part of it?—I had nothing in writing to prove it; I merely know from what I have heard in conversation.

I understand that you know nothing about this except what you were told or heard in conversation?—I received an invoice, which I had in my possession.

Where is it? Have you got it now?—No, I have not.

What have you done with it?—I copied it into the invoice book; I kept copies of all those papers at Liverpool.

What did you do with the invoice itself?—I returned it to Captain Bulloch.

Can you tell us what the Alabama received from the Bahama?—I received guns.

How many?—From the Bahama I had no invoice.

What, in point of fact, did you receive?—Two gun carriages and guns.

Did you mention two?—There were two.

Did you receive guns and gun carriages from the other vessel?—I did.

Besides stores?—Besides stores.

MR. ATTORNEY GENERAL. Are these people here now, Herring and Mrs. Parkinson? As the witnesses do not appear, I will not waste time; if they appear at the end of the cross or the re-examination, your lordship will allow us to put forward those documents.

LORD CHIEF BARON. To propound them?

MR. ATTORNEY GENERAL. To propound them, my lord.

LORD CHIEF BARON. I very much doubt whether they are evidence.

MR. ATTORNEY GENERAL. I should have to recall this witness to make them evidence, of course; I should deal with them as acts of this witness, because he used the word "allotment," of course.

SIR HUGH CAIRNS. We will come to that in due time.

Cross-examined by Mr. KARSLAKE:

I understand you to say that you paid Edmund M. Anderson and Irvine S. Bulloch and William H. Sinclair; did you pay Mr. Clarence R. Yonge?—I did.

That is yourself?—That is myself.

Where were you brought up?—I was raised, I lived in the State of Georgia.

Do not alter the term; you were "raised" in the State of Georgia?—It is particularly an expression that is used in America, "raised."

You were "raised" in Georgia?—Yes.

When did you first come to England?—I came to England in March, 1862.

From Savannah; at least you had been living at Savannah?—I had been living in Savannah.

Then you left your wife at Savannah when you came over, did you not?—Has that anything to do with the case, sir?

It has a very material bearing upon it, I think; is that so, that you left your wife and children at Savannah?—May I ask a question, whether I am obliged to answer that question?

I think you will find it necessary; have you any objection to answer it?—I have an objection to answer.

I must ask you to answer, nevertheless.—Am I obliged to answer, my lord?

LORD CHIEF BARON. What is your objection?—I do not see what my own family affairs have to do with the case.

LORD CHIEF BARON. I must explain to you that, in this and every other court where testimony is received, the witnesses are cross-examined as to their credit and what they have done, and whether they have ever conducted themselves in a manner not creditable to them either as men, or husbands, or fathers, or in any way. You may decline to answer; but a question may be put in some instances that a witness cannot decline answering. I suppose the object of the learned counsel is to show that you left a wife and a family in a way that does you no credit.

MR. KARSLAKE. There was a question put to the last witness whether certain documents were given into the hands of Mr. Clarence Yonge's wife, in Liverpool, which leads me to ask certain questions as regards Mr. Clarence Yonge's wife.

LORD CHIEF BARON. The learned counsel has another ground. I took it more generally.

WITNESS. I left her there.

LORD CHIEF BARON. Any witness may be asked anything respecting his past life, the object of which is to show that he is a witness of credit or not; and the learned counsel has now suggested that as certain documents were handed over to your wife

in Liverpool, we want to know something more about her.—I have answered the question of the learned counsel.

MR. KARSLAKE. Did you leave your wife and two children in Savannah when you left?—I did not.

One child?—One child.

Have you been in the confederate army yourself?—I never was.

Nor in the navy, except as paymaster?—Yes, I have been acting so.

When did you first make the acquaintance of Captain Bulloch?—I made the acquaintance of Captain Bulloch shortly after the arrival of the steamer Fingal in Savannah.

And were you, until the time when you and Captain Bulloch parted, his confidential secretary?—Until such time as I left him here in England, do you mean?

Yes.—I was not; I wrote some letters for Captain Bulloch.

You describe yourself as his secretary?—I do not; in Savannah I wrote or copied nearly all his letters; in England not nearly all; I do not know how many he wrote, but I copied some of his letters.

You came over with him?—I came over with him.

You were in his employment when you came to England?—I was in the employment of the confederate government.

You are at this time a spy in the service of the United States government, are you not?—I am not.

In their employment?—I received no employment from the United States government or anybody else.

Will you look at that letter and tell me whether that is your signature?—May I ask a question before I look at this letter?

It is not general in this country.

LORD CHIEF BARON. Your business is to answer the questions, not to ask them.

MR. KARSLAKE. Perhaps you will tell me what I want to know; will you look at that letter, and say whether it is your signature or not (handing the letter to the witness)?—That is my letter; I wrote it.

Hold it in your hand a moment; I have a copy of it. Now, when you were in England with Captain Bulloch, were you at that time communicating everything that passed with Captain Bulloch to the United States government?—What is your question?

At the time when you were in England with Captain Bulloch, before the sailing of the Alabama, were you in communication with the United States government?—I was not.

When did you first make the acquaintance of his excellency Mr. Adams, the minister in London of the United States government?—About the 1st of April.

What year?—In this year; the latter part of March, or the 1st of April.

Is it true that you gave him valuable information relative to the confederate steamer Alabama?—I gave to the United States officials what I suppose went to Mr. Adams; I made certain statements to them.

Did you make them after you returned to England the second time, after your cruise in the Alabama?—I did.

I suppose I may infer that, whatever you were, you are not a secessionist now?—I am not at any rate.

You received confederate pay from the Alabama until you left her in Kingston harbor?—I received my pay in Kingston.

Up to what date did you receive your pay in Kingston?—In Port Royal, it is the same thing.

Up to what date was that?—Up to the 25th of January.

The 25th of January, 1863?—Yes, 1863.

Have you received confederate pay since that time?—I have not.

How long had the Alabama been in the harbor at the time that you left her?—How long had she been in port? About a week.

She was then waiting to get out again, was not she?—She was to sail that night.

And when she sailed out did you drop overboard and go ashore?—Not exactly.

What was it exactly, then?—Several hours before the ship sailed I left her.

You left?—Yes, I left.

How did you get ashore?—I was allowed to come ashore.

You were allowed to come ashore, and did not come back again?—I did not.

You knew that she was trying to break the blockade that night?—No, there were no vessels to blockade her that I am aware of.

You knew she was trying to get out that night?—I knew it was the intention of Captain Semmes to sail.

I may assume your connection with the confederates stopped from that night?—It stopped during the day.

You received payment up to that day, and you then became a northerner?—Anything you choose to say.

I was wrong in my question just now ; but the vessel was watched when she was in the harbor, was not she, at Port Royal ?—Not that I am aware of.

Were not there several vessels watching ?—Not that I am aware of ; I suppose you mean United States vessels.

Yes, I do.—There were none there.

After you had gone ashore, where did you go before you came to England again ?—I did not go anywhere.

Did you remain in Kingston ?—I remained in Kingston.

And there did you marry a mulatto woman who now passes as your wife in Liverpool ?—I did not.

I beg your pardon ; did you marry a woman who now passes as your wife in Liverpool, or did until recently ?—Yes, I did.

LORD CHIEF BARON. You married a woman, who now passes as your wife in Liverpool, at Kingston ?—Yes.

Mr. KARSLAKE. A young widow in whose house you had been lodging, was it not ?—Yes, I had been there.

Having married the lady, and the Alabama having sailed, was a sale made of all her property almost ?—There was.

Not all, I think ?—Not all of it.

I was going to make an exception ; I believe there was a little negro boy that was not sold ?—I do not know that negroes are considered property in England.

Did you say we will take the negro boy down to Charleston, and he will fetch £100 there ?—I do not know ; perhaps.

Did you not say "We will take the young negro to Charleston ; he will sell there ?"—I did not say "We will take him down."

That it would be a good thing to do ?—I have made remarks about it.

Did he fetch a great price ?—When he is sold I will inform you.

Then he is not sold ?—When he is I will tell you.

Did you tell your wife that the only thing to do was to go across to Liverpool ?—I did not.

Did you come across to Liverpool ?—I did.

And Mrs. Clarence R. Yonge, the second, with you ?—She came in the ship.

And you came in the ship ?—And I came in the ship.

LORD CHIEF BARON. How old was the young person you were speaking of ?—Which person ; the negro ?

Yes.—The boy ; he was about fourteen years of age. I suppose he was the one you had reference to.

Mr. KARSLAKE. What became of the little black boy ?—He is in Liverpool.

He is in Liverpool now, is he ?—He is ; he was when I last was there.

When were you last there ?—About two or three weeks ago ; no, about a month ago ; five weeks probably.

When did you arrive in Liverpool ?—I arrived in Liverpool from Kingston about the 20th or 25th of March of this year.

I think you lived a little while at the "Angel"—Yes, I was there.

And then did you go off and live with some other person, not Mrs. Yonge the second ?—I went away.

Was the consequence of that that your wife was left destitute, and did you go off to New York ?—Not that I am aware of.

Did you leave England again ?—I did not.

Did you leave Liverpool ?—I did.

Did you leave your wife a single sixpence when you left ?—I did.

How much ?—I do not recollect.

Did she become in a state of destitution while you were away ?—She was not particularly destitute. I do not know what you call destitute.

Had she anything to eat and drink, except what she received from the bounty of strangers ?—She had ; her mother was with her, who had plenty of money.

You left her to her mother, did you ?—I did not leave her to her mother. I came off as I intended, on my own business.

Was not the business you came off from Liverpool on, to go up to town and see Mr. Adams, the minister ?—I came up on what I might call my own business.

Was that for the purpose of seeing Mr. Adams ?—I had not fully made up my mind at that time whether I would see Mr. Adams or not.

When you got to town did you make up your mind that you would go to him, and see him ?—I saw him ; but it was not in London that I made up my mind that I would see him.

You made up your mind in coming to town or somewhere else ?—I made up my mind and saw him.

I suppose at that time you were not any longer a secessionist ?—As far as my opinion is concerned. Is that another question I have to answer, whether I am a secessionist or not ?

Have you been giving information to Mr. Adams, the minister of the United States, ever since that time?—I had only one statement to make, which I made at that time, or about that time; since that time I have been questioned with regard to the same things.

Did you go to his excellency for the purpose of being questioned?—I did not.

They came to you, did they?—He did not come. I was with parties to whom I was authorized to give the information.

Had you made up your mind to leave Captain Bulloch and the southern States at the time you were on board the Alabama?—I had not made up my mind to leave the southern States, but I had made up my mind to leave the Alabama.

Was that when it began to get too hot to please you?—Not particularly.

You came over, as I understand, to Liverpool for the express purpose on the second occasion of putting yourself in communication with Mr. Adams?—I have not said anything of the kind.

Is that so?—That was not an objection if I did.

Did you come over for the purpose of giving information of what had happened when you were with Captain Bulloch?—I did not come with that purpose.

You did not come with that purpose, but you had made up your mind to do so?—After I came I made up my mind what course I would adopt.

Have you got an appointment yet in the United States service?—I have not.

Where have you been living lately? Since what time?

Within the last month?—I have been part of the time in Lancashire, and part of the time in London.

How long after you arrived in Liverpool on the second occasion did you put yourself in communication with Mr. T. H. Dudley, the United States consul at Liverpool?—Mr. T. H. Dudley? I met him the day I called on Mr. Adams.

Was it in London you met him, then?—I met him in London.

That is, Mr. Dudley who is consul of the United States at Liverpool?—He is consul of the United States at Liverpool.

Were you at Liverpool after that time at all?—Yes, after seeing Mr. Adams, I was.

When were you last in Liverpool?—I was in Liverpool about five or six weeks ago.

Have you, since your arrival in England, by your own actions for the benefit of the northern States, cut yourself off from all property you previously possessed?—I have.

MR. ATTORNEY GENERAL. Pardon me; you are asked about these statements. This letter has been in your hand. Were the statements you have been referring to by word of mouth or in a letter? You were asked whether you had stated that you had cut yourself off.

LORD CHIEF BARON. He is asked as to the fact.

WITNESS. Is it whether I cut myself off or whether I have made that statement to any one?

LORD CHIEF BARON. The question is not whether he made a statement, but whether in point of fact he has cut himself off.

MR. ATTORNEY GENERAL. I do not know what that means.

SIR HUGH CAIRNS. Perhaps the witness does.

MR. ATTORNEY GENERAL. Have you looked at the letter that was handed to you, and read it?—I have.

MR. ATTORNEY GENERAL. It is pretty clear that the examination is from the letter.

LORD CHIEF BARON. So it may be; why not?

MR. ATTORNEY GENERAL. If it be an examination as to the statement, which it is really, I submit that the letter ought to be put in.

LORD CHIEF BARON. The examination is as to certain facts; the letter was put into his hands before; he says they are true. Mr. Karlake takes the letter and says: Look at that and see what you have said, and then asks the question, "Is so and so true?"—He says, "Yes."

MR. ATTORNEY GENERAL. Of course he may refresh his memory by the letter. I thought the question was whether he had made such a statement.

LORD CHIEF BARON. No; the question is as to a matter of fact, whether he has cut himself off. I do not know exactly what it means, nor do I quite know exactly how it is *ad rem*.

MR. KARSLAKE. (To the witness.) There are at present circumstances which prevent your remaining in England?—I imagine that there were.

Look at that letter; do you remember the terms?—I remember them, but I would like to look at the entire letter again. (The letter was handed to the witness.) I have read it.

Were you at that time possessed of any means at all?—I was not entirely out of means.

Very nearly?—I was.

Now the other question I put was, Were there, at the time that you were writing that letter, circumstances which prevented your remaining in England at all?—There were no circumstances which prevented my remaining.

Will you first look at your letter?—I have read it.

Were there circumstances which rendered it expedient for you to go away to the States?—At the time the statement was made, I believe it to have been the case.

At that time you considered that it was necessary for you to leave; was that so?—Yes; I deemed at that time that it was necessary for me to go.

Did you desire, if you could arrange with Mr. Gideon Welles, to return to England and finish the work you had already commenced?—If it was necessary, if they deemed it was necessary for me to do so, I would have returned.

And finish the work you had commenced?—Anything that I could do.

Anything you could do for the United States government?—Yes; for the United States government.

I suppose you expected to receive as much as you could get for that?—I asked no questions. When I went to the United States minister I asked no questions.

How long after your arrival in Liverpool, if at all, did Messrs. Duncan, Squarey and Company, or either of them, see you?—I saw Mr. Squarey for the first time, to the best of my knowledge, about eight weeks ago.

How many weeks ago did you say?—Six or seven weeks ago; just previously to my leaving Liverpool the last time.

Had you seen Mr. Maguire, the detective, at all up to that time?—If I had, I do not know him.

Did you see Mr. Hamel when he was down in Liverpool?—I did not.

(The witness withdrew.)

MR. EDWARD FITZ MAURICE sworn and examined by **MR. LOCKE**:

What are you?—I was cook on board the Alabama.

Was she called the 290?—When I joined her she was called that.

Where did you join her?—From Birkenhead.

How many men went with you from Birkenhead?—About twenty men, to the best of my recollection.

Do you recollect when that was?—In July.

What July?—Last July.

July, 1862?—Yes.

Where was the vessel lying when you joined her; how did you get to her?—By a tow-boat.

What was that?—I do not recollect.

You went out by a tow-boat, and where did you find the 290 or the Alabama?—Down channel.

Was she off the Welsh coast?—By the Welsh coast.

Were you sent into the cabin aft with the others?—I went as a sailor first.

Then did you go into the aft cabin along with the rest?—No; I was a month or two months working on the deck.

After those two months where did you go?—After the two months I was asked then whether I would go as steward.

LORD CHIEF BARON. Is this witness called merely to prove these facts about the Alabama?

MR. LOCKE. Did you see Captain Bulloch there?—Yes, I did.

LORD CHIEF BARON. Is the witness called for any particular matter, or is it merely to show that the Alabama was a confederate vessel?

MR. ATTORNEY GENERAL. I think that part of the case is proved as much as can be proved.

LORD CHIEF BARON. Of course we do not act upon mere newspaper information, or upon what may be called common rumors and reports. If it was to be said that the Alabama was a confederate vessel, some evidence must be given of it, but the moment any evidence is given it becomes necessary to overload the case.

MR. LOCKE. This witness speaks to the whole course of the Alabama all through.

MR. ATTORNEY GENERAL. My learned friends may wish now to cross-examine the witness whom we thought we should have occasion to recall, but we have not occasion to do so in consequence of the absence of evidence which we expected to be able to produce. Will Mr. Chapman step back into the box?

SIR HUGH CAIRNS. We do not want to cross-examine him.

MR. ATTORNEY GENERAL. Then, my lord, that is the case for the Crown.

LORD CHIEF BARON POLLOCK. You do not make use of those papers?

THE ATTORNEY GENERAL. I cannot get the witnesses here, my lord, and of course, therefore, I do not make use of them.

SIR HUGH CAIRNS. My lord, before I proceed to address the jury, under your lordship's permission, upon this case, on behalf of the defendants, it might be convenient that I should state to your lordship that it occurs to myself and my learned friends who appear with me in this case, that there will be certain matters of law upon the construction of the act of Parliament to which it will be necessary at some period of the case to call your lordship's more particular attention, and it might be convenient

at the outset that I should state to your lordship what those matters of law appear to us to be, and having stated them in the outset, I will remain in your lordship's hands, whether to ask your lordship's consideration of them for the purpose of the direction to the jury or to take the objection in any other form that may appear to be proper.

Now, I must remind your lordship of that which was stated about the form of what I may call the information in this case. Your lordship was told, and indeed your lordship saw by the summary of the counts, that there were some counts toward the end of the information of which I may at once get rid. I suppose it will be agreed by the attorney general on behalf of the Crown, that those counts at the end of the information, which I believe are numbered ninety-seven and ninety-eight, and which allege a building and equipment of the Alexandra as a transport and store-ship, I suppose it may be admitted that those may be put out of the case altogether; and if so, it is better that we should understand that that is the view which my learned friends take of the case.

THE ATTORNEY GENERAL. We will not stand on any count which describes the intention to have been that this should be used as a transport or store-ship. We have not so opened our case.

SIR HUGH CAIRNS. I did not suppose that my learned friend so considered it; only, in order to prevent misconception hereafter, I mention it now. I now come to the main counts in the case which my learned friend said, very fairly, might be judged by the first eight counts of the information, the others repeating the same idea in different forms of words. Those counts are all found in the 7th section of the act called the foreign enlistment act, and I will pray your lordship's attention to that section, and I do so with the more anxiety because, as your lordship has more than once observed, this is the first occasion on which a court has been called upon to put a construction upon this section, which is one of an extremely involved character, as to the construction of the words of which no one, I think, will say it is a very plain section, or one inclosed in a very easy form of words to put a construction upon. Now, if your lordship has that clearly before you, you will see that it enacts that "If any person within any part of the United Kingdom or any part of his Majesty's dominions beyond the seas shall, without the leave and license of his Majesty for that purpose first had and obtained, equip, furnish, fit out or arm, or attempt or endeavor to equip," &c.—I pass over those words—"any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province or part of any province, or country, or against the inhabitants of any foreign colony, province, or part of any province or country with whom his Majesty is at peace." Then, without reading the rest of the section, the person so offending shall be guilty of misdemeanor, and then there shall be a certain punishment, and annexed to the punishment for the misdemeanor is the forfeiture of the ship. Now I will pray your lordship's attention to this in the section. Your lordship observes it speaks of two different kinds of ships or vessels, one a transport or store-ship, which is one kind of vessel contemplated, the other a vessel or ship to cruise or commit hostilities, evidently pointing to two things which are extremely distinct; the one, a ship which no doubt may be employed in a hostile expedition, because we know that a transport or store-ship is useful or necessary for a hostile expedition, but the other a ship of quite a different kind, a ship which is to take part as an armed vessel in an expedition, or to cruise against the forces of another country. Now the points (I shall endeavor to make them as short and distinct as I can to your lordship, and I should perhaps hardly argue them now, because your lordship will better consider them at the proper time) which I submit to your lordship on the construction of that section, are two. Your lordship has probably observed that there is no count in this information alleging an arming of the Alexandra or any attempt or endeavor to arm her. There is no such suggestion in the information, nor indeed has any such case been opened at the bar. Now, the first proposition which I submit to your lordship on the construction of the section is this: I apprehend it is obvious, on the construction of this particular section of this act of Parliament, that the words which we find here together, "equip, furnish, fit out or arm," are words which are to be read, as we say in law, *reddendo singula singulis*, with the descriptions of ships which afterward are given. It cannot, of course, for a moment be conceived that the act of Parliament ever contemplated that a transport or store-ship should be armed, for that would be absurd; and, on the other hand, it never can have been contemplated that a ship equipped and fitted out, but not armed, should ever be a ship to cruise and commit hostilities. I apprehend, therefore, that the proper construction of the section would be to refer those words, "to equip, furnish, and fit out," to the kind of ship or vessel afterward

spoken of, say a transport or store-ship, as to which these words are extremely proper and apposite, and describe a ship leaving the shores of this country—and the gist of the offense is that it should be committed within this country—describe a ship when leaving the shores of this country to answer the purpose of a transport or store-ship; a transport or store-ship competent to fulfill the duties for which she is intended when fitted out. If that should be the view, the consequence to which that would lead is simply this: the whole of these counts, rejecting the two last, which we have now done with, allege an equipment, furnishing, and fitting out, and nothing more, and allege it with an intent to cruise and to commit hostilities. Some of them all ~~the~~ it with the intent to be employed in the confederate service; some omit that allegation as to the intention to employ, which I shall have a word to say about afterward; but all of them allege this, an equipping, furnishing, and fitting out with an intent to cruise and to commit hostilities. Now, if I am right in saying that the vessel spoken of here as the vessel to cruise and commit hostilities is the vessel described in the earlier part of the clause as a vessel to be armed, and that the word “cruise” is the word to be properly referred to the vessel to cruise and commit hostilities, there really is not a single count in the whole of this information which has alleged the offense in the shape and form in which the act of Parliament suggests that the offense may be committed; the act of Parliament with regard to a vessel to cruise and commit hostilities, stating that that vessel must be armed or that an attempt must be made to arm her. Now that would be the first objection I submit to your lordship as going to the whole of the counts of the declaration, except the two last, which are here disposed of on other grounds.

But now I come to another view of this section, which seems to me to be one not merely of great consequence in itself, but one which must necessarily be adopted in order to give the act of Parliament the construction which we know is consistent with the whole system of legislation on this subject, and which is indeed consistent with reason and common sense. I will pray your lordship to observe that you find two clauses in this 7th section, both of which commence with the words “with intent.” Your lordship will observe, the first time the word “intent” occurs is at the end of the seventh line of the second clause, where, after speaking of equipping, furnishing, fitting out, or arming any ship or vessel, these words follow: “with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship.” That is the first intent. The equipment is supposed to be with the intent that the ship or vessel should be employed in the service of a foreign state as a transport or store-ship; and in order to make up the idea indicated in those words, your lordship will observe the vessel must be employed by a foreign state, and the purpose for which the foreign state is to employ her is as a transport or store-ship; and the latter words showing for what purposes against any other prince or foreign state. But then, having got to the end of the clause which spoke of the transport or store-ship, we commence with a new clause in the alternative, “or with intent to cruise or commit hostilities against any prince.” The question is, to what is that last clause, “or with intent to cruise or commit hostilities,” to be referred? I apprehend, on every principle of construction, that clause must be referred and carried back to the words “ship or vessel,” and must be read as an alternative to the other clause, which likewise begins with the words “with intent.” So that, as your lordship will see, there is an alternative supposed by the act of Parliament, equipping and arming any ship or vessel with either of two intents and we must accurately discriminate what those two alternative intents are. The one of the two alternative intents is the one I have already read and spoken of, that the ship should be employed in the service of a foreign state as a transport or store-ship; the other alternative intended is that she should be equipped with intent to cruise or commit hostilities; and the whole is overridden by the introductory words, that there is to be some person; the words are, “if any person.” There is to be some person within her Majesty’s dominions who is supposed to equip and arm a ship or vessel with one or other of these two intents. You must have a person; you must have him within her Majesty’s dominions; you must have him equipping, furnishing, fitting out, or arming (whatever that may mean we will consider afterward) a ship or vessel; and you must have him doing so with one of two intentions. The other is the alternative intention, that she shall cruise and commit hostilities, with no reference there to whether she is or is not to be employed in foreign service; and I apprehend that the history of the case will show that the latter alternative was really the main and obvious end against which this act of Parliament was directed, namely, the fitting out by subjects of this country of privateers to cruise and commit hostilities, the ship or vessel being fitted out by the person who intended, either by himself or his agents, to cruise and commit hostilities; and I will point out the absurdity of any other construction. If you are to hold that these two clauses which I have read, both beginning with the word “intent,” have the meaning that the

person spoken of in the beginning of the clause was supposed to equip a vessel with the intent that she should be employed by a foreign state with the intent to commit hostilities, you would have this: a man in her Majesty's dominions equipping a vessel, not with an intention to do something, but with an intention to have that vessel employed by another party, a foreign state, with an intention in that foreign state, as to which he could have no control or knowledge, to employ the ship in a particular manner. Now I find that, in some of the counts in this information, the construction which I have submitted to your lordship has been adopted. I find that in some of the counts the allegations are that the *Alexandra* was fitted out by persons in this country with an intent to cruise and commit hostilities, as a matter of evidence. We will deal with that at the proper time, and upon that I shall be heard addressing the jury, under your lordship's sanction. But there are other counts in the declaration, a great number, which make wholly different allegations, which allege that certain persons in this country have equipped the ship *Alexandra* with the intent that she shall be employed by a foreign government, namely, the Confederate States, with the intent, the second time, to cruise and commit hostilities; that is, the persons in this country have equipped the *Alexandra*, not merely with a single intention, that she should be employed by the Confederate States, but with an affirmation of what the intention was that the Confederate States should do with the vessel so employed. I apprehend, as a matter of law, that will be found to be an incorrect construction of this section; and I desire, in whatever may appear to your lordship to be the most convenient way, to take those two points—the one going to the whole of the points in the information, the other going to a very large number of them—to take those two points, and to submit them to your lordship for your consideration, to be dealt with at the proper time, when your lordship may direct the jury on the points of law to arise in the case.

LORD CHIEF BARON POLLOCK. I think, Sir Hugh Cairns, the proper course would be to go on with the case now, and when the opinion of the jury is delivered, assuming that there is one count which is objectionable upon the verdict, then that count would not stand. There would then be either a motion for arrest of judgment or by arrangement. If the court thought that the count was not within the act of Parliament, a verdict of "Not guilty" could be entered.

The **ATTORNEY GENERAL.** I may mention, my lord, that it strikes me at present that the first point taken by Sir Hugh Cairns is on the record.

SIR HUGH CAIRNS. I agree to that.

LORD CHIEF BARON POLLOCK. In reality the whole is on the record.

SIR HUGH CAIRNS. The whole of the second point would not be quite on the record; the first would be on the record and would be an objection in arrest of judgment; and this would be on the record so far as regarded a certain number of counts. As to the other, it would be a point whether there was any evidence; as to which, of course, I shall address the jury, under your lordship's sanction.

Now, I have stated those points which are peculiarly for your lordship's consideration. Of course there will arise, in the observations which I shall have to make, certain other questions on the construction of the act of Parliament, but those will be more particularly dealt with as I venture to put them forward in my address. My learned friend suggests, and I quite accept the suggestion, that it would be convenient also if your lordship would be kind enough to take a note of our objection. It is putting the same objection in another form, that inasmuch as the intent to cruise and commit hostilities must be the intent of the persons who are engaged either in the control or in the building of the ship as proprietors and as having dominion over the ship, there is no evidence whatever in this case to go to the jury that there was any such intent.

MR. MELLISH. What I just mentioned that your lordship would take a note of was this; We state that an equipment with intent to cruise and commit hostilities necessarily involves an arming in this country; that if the ship is to sail from this country in an unarmed state, and the intention of the parties is that she should sail in an unarmed state, that is not sailing with intent to commit hostilities within the meaning of this section, and that there is no evidence in this case of an intention that she should be armed in this country.

SIR HUGH CAIRNS. May it please your lordship, gentlemen of the jury, I have the honor to appear in this case on behalf of the firm whose names you have so often heard mentioned in the case, Fawcett, Preston and Company. Gentlemen of the jury, you have heard that this firm has been established in Liverpool for a great number of years; I think it was said for as many as forty years. I heard one of my learned friends who appears here on behalf of the Crown say that it was a very singular and remarkable thing that we had not a partner in the firm who appeared to have the name of the firm.

In point of fact, that is not quite right, because Mr. Preston, I am happy to say, is still alive, and is still a partner, though not one of the active partners in the business. But you are aware that when a firm has existed in this country for forty years, and has made a great deal of money, a great many of those who were the original partners retire from it on very pleasant terms, others succeed as continuing partners, and the

name of the firm, which has become so celebrated and renowned for its character and its workmanship, is continued often when the original partners have ceased to have any part in it.

You have had already a general description of the business of this firm. We were told that they employed as many as nine hundred men on an average; that they made every kind of work which can be made in a manufactory, and work of this kind not merely for peaceful purposes, engines for steamboats, works for sugar manufactories, and cotton presses; but also that they made cannons of all kinds and descriptions. I think one of the witnesses for the Crown said that they made ordnance of every sort, and it was lying about for any person who chose to come in to buy it. They make shot and shell, and things like that upon the scale and in the manner which was described to you. The firm of Fawcett, Preston and Company, we must take it as being admitted, was, on the 6th of April in the present year, the owners of the ship *Alexandra*, of which you have heard so much said in the case. That is admitted as regards the date at all events; that on the 6th of the present year they were owners, and the bona fide owners of the ship. The ship at this time was lying in a dock at Liverpool, which you have heard called the Toxteth dock. Now, the Toxteth dock is one of the public docks at Liverpool; the ship was lying then in public; there was no concealment about it; any person might go to look at the ship who chose, and from first to last it appears that there was not the slightest attempt at concealment at any stage of the construction of the ship. She was lying in the Toxteth dock on the 6th April of this year; and on that day she was seized, as you have heard, by the officers of the customs, and seized upon the allegation, not that she was to be kept in safe custody until there was some investigation made with regard to her, but she was seized as forfeited, a ship that had passed away from whoever might be her owner and had become the property of the Crown, because an offense, a misdemeanor, had been committed, and, therefore, that the ship had become the property of the Crown, and had ceased to be the property of the owner.

That was the allegation, and I need not tell you, of course, that the seizure of a ship under those circumstances can only be justified if the Crown can make good to the letter the allegation which it has put forward. If it cannot, the seizure is a wrongful seizure; the ship does not belong to the Crown; and there is no justification for having taken her from the owners. The course which was adopted was one which is very easily described. It was understood that the Crown, of course, would not have acted in a case of that kind without some information given. It was understood that depositions had been made, on which the officers of the Crown had acted. The request was made on the part of Messrs. Fawcett, Preston and Company, to those who represent the customs, to be allowed to see the depositions which had been made, and on which the ship had been seized. Messrs. Fawcett, Preston and Company knew (we have seen evidence enough of it in this case) that spies were about and tolerably rife in Liverpool. They knew that those gentlemen were not the most scrupulous in the statements that might be made; and certainly they entertained the hope that they would have been informed, on behalf of the Crown, of what the nature and character of the information was upon which the seizure of the vessel had been made; and I have not the least doubt that if it had appeared advisable to furnish those gentlemen, whom I represent, with information of that kind, much of what has occurred since might have been spared; and if it had only been known on what ground the Crown proceeded, the Crown might easily have been made aware that the proceeding was entirely misconceived, and could not be supported. However, the course adopted was this: The matter has been brought on for trial in the usual way; and the first information which we have has been a document, which has been referred to; you have heard me refer to it just now in my address to my lord. The pleadings in the cause, what is called by a somewhat amusing and somewhat ironical term, the "information," because I am bound to tell you that it does not contain the least information in the world, and I suppose that this is the reason why it has got its name. This ponderous document is one consisting of ninety-two counts. The attorney general described it in his opening by words which were extremely accurate. He said that ninety-nine hundredths parts of it might be disregarded; that it was simply ringing the changes on the various words in the section of the act of Parliament, and that it did not supply any information at all on the points which were in question. We are, therefore, driven to look at the opening of the attorney general, for the purpose of seeing what is the nature of case which the Crown put forward.

Now, the attorney general says, and says very accurately, that this is the first case which has ever been brought to trial under the foreign enlistment act, although we are now in the year 1863, and the foreign enlistment act was passed in the year 1819, which is exactly forty-four years ago. Now, that is a very significant fact, and I cannot help thinking a very remarkable part in the case. There have been since 1819 a great many wars in the world. There have been a great many wars in which happily we have not been engaged, in which the government of this country has been neuter. There have been a great many wars between nations on the continent of Europe and

nations in other parts of the world, with regard to which we have taken no part what soever; and during the whole of that time the neutrality of the country has been preserved and efficiently maintained, and all the time the commerce and the dealings of the country have not been disturbed or interfered with. There has not been a single allegation made in a court of justice, or brought to trial against any trader or merchant in this country, for having done any act within the scope and compass of the foreign enlistment act, either as to a ship or otherwise, which could be made the subject of complaint in a court of law. Now, I cannot help thinking that it will be found in this case that there is some explanation for that very remarkable circumstance; I mean the circumstance that there never has been a case brought to trial previous to the case which is now being tried before you.

Gentlemen, you have seen in this case sufficient indications from the evidence which you have already heard, that we have here the advantage not merely of the advisers of the Crown and who represent the Crown, but that behind them these proceedings, as the attorney general said very fairly and candidly, were urged on and promoted by the agents of the United States government in Liverpool. My learned friend the attorney general said that the United States had their agents there who were on the alert. They thought that they had a right to complain of what was being done at Liverpool; they applied to the Crown, and they asked the Crown to put the foreign enlistment act into operation; and the Crown has put the foreign enlistment act into operation. The advisers of the American government are here assisting, and counselling, and conducting the proceedings which are now taken before you. I do not think we can be ignorant of that; the attorney general referred to what are matters of notoriety in his opening; but there are matters of notoriety in all those affairs; we all of us know perfectly well that there has been the greatest anxiety on the part of the United States government to try whether they could strain and stretch the laws of this country, and have an indictment maintained in this country, founded upon allegations of theirs, that they conceived acts were being done in this country of which they thought they had a right to complain.

What has evidently happened is this. The law officers of the Crown have said to those who are called the agents of the United States government, "We have a foreign enlistment act; it was passed in the year 1819; there never has been an information under it; we do not in the least think that you have any evidence which can prove a case under it; but if you think otherwise, we will bring it before a jury; we will do our best; but do not be surprised if you find in the result that you are entirely mistaken, and fail in your case." It was a very fair course to take, and it will explain the circumstance that we have now got a case of this kind, which of course is nothing different from that which has been done for years and years, ever since the foreign enlistment act was passed, and before which nobody ever thought that it was a proceeding upon which any imputation could be cast as being contrary to law. It will explain why we have never had such a complaint before, and why we now have it for the first time.

Now, gentlemen, I must ask you to consider, with a little minuteness for a moment, the way in which the attorney general puts his indictment; and I will ask you, for that purpose, to divide it into what I think will be found to be the four charges of which, in his opening and in his explanation of the indictment in this case, the accusation of the attorney general consists. In the first place he says, that in the proceedings which are complained of there were a great number of persons concerned, mixed up, and implicated together. Very vague terms are used, and they are described in this way. Taking the names from the indictment in this case, the names are these: The Messrs. Miller, who are ship-builders at Liverpool, who have a public ship-building yard, and who build ships for those who desire to have ships built. I will take the names of the firms, because it will be more convenient and will keep the matter more in your minds. The second parties are Messrs. Fawcett, Preston and Company, who, as I told you, are the parties in the case for whom I have the honor of appearing; the third parties are the firm of Fraser, Trenholm and Company; and then you have the individuals named, Captain Tessier one, Captain Bulloch another, and a person whose name I have only seen in the information, called Butcher; I will leave out Mr. Butcher. The attorney general says that all these persons were mixed up together in what he has to lay before you.

His first charge is some sort of connection between the persons I have named. His second charge is this, that these persons, or some of them, equipped, furnished, or fitted out the *Alexandra*, or attempted to do it, with intent to cruise and commit hostilities in some shape or form. His third charge is that they did this with the intent that she should be employed in the confederate service; and the fourth is, that she should cruise and commit hostilities against the federal States. These I apprehend will be found to be the four propositions which go to make up the entire proposition on which the attorney general rests: first, the connection between the parties; secondly, that the *Alexandra* was fitted out to cruise and commit hostilities; thirdly, that she was to be employed

by the confederate government; and, fourthly, that she was to cruise and commit hostilities against the federal States.

Now, I must call your attention to this. If those charges can be sustained, we must have no misunderstanding or misapprehension as to what the effect of them is. The effect of those charges, supposing they can be sustained in point of evidence and in point of law, is that they constitute, under the foreign enlistment act, a misdemeanor against all the persons concerned. My lord said to us this morning, and said most accurately, that in point of form we are not trying, and my lord is not trying in this court a misdemeanor for the purpose of criminal sentence. That is most true and accurate; but at the same time you will bear in mind that these very acts, if they are within the foreign enlistment act at all, constitute a misdemeanor within the foreign enlistment act, a crime that is against all the persons who may be found to be concerned. No doubt there is, as incident to and as consequent upon the crime and the misdemeanor, the forfeiture of the ship; but there is the crime declared by the act of Parliament, and then the forfeiture of the ship. Now, I beg your attention to that, because I cannot help thinking that in that has been said in some parts of the occasional arguments which have taken place in your hearing, there has been rather a desire to treat this as a light matter, and to say: "There is no doubt something about misdemeanor in the act of Parliament, but we are talking of this, whether we have a right to hold the ship or not. Let the misdemeanor stand for itself and be judged of at the proper time." Gentlemen, I apprehend that that is not the course which is to be taken. The matter must not be blinked. The charge is a charge of misdemeanor. The charge and the mode of proving it must be considered by you on the footing that these acts, if they are properly described by the record, and properly proved in the evidence, would go to create and constitute a misdemeanor, and that in substance, therefore, the charge against Messrs. Fawcett, Preston and Company—for their names are in the information—the charge against them is that they were parties to and participators in an act which is made a misdemeanor and a crime according to the law of the country. I dwell on that, and I ask your particular attention to it the more for this reason, that I venture to think that a case of this kind was never spoken of in the opening before in the way in which it has been dealt with by the attorney general. Because, how did he open this case and present it to you? I am in your judgment whether I do not with substantial accuracy describe the manner in which my learned friend spoke of the case which he had to present to you. My learned friend said: "I will prove, with regard to the *Alexandra*, that she could very easily be turned into a ship of war. I will prove that by the evidence of skillful persons, who can speak to it." Then he said, "I will show you that these men, Captain Bulloch, Captain Tessier, and Mr. Hamilton, were seen about the yard and about the spot where this ship and her equipments were being prepared. They were occasionally looking at her, talking about her, interfering with her; and then I will show you further this, that those persons are proved on other occasions, in some way or other, to be acting for or on behalf of the Confederate States; and," says the attorney general, "it may be nothing that may be very far from proving the case; it may be explained. I don't in the least suggest that it cannot be explained, but (says the attorney general) I will ask you to take these scraps of evidence, the fact that the *Alexandra* could be converted into a gunboat, and the fact that these persons, Captain Tessier, Mr. Hamilton, and Captain Bulloch, were seen in her neighborhood, interfering or interesting themselves in her and about her, and the fact that they are proved in other matters to act as agents for the Confederate States. I will ask you to put these things together and not to hold that the case is proved, but I will ask you to presume that that is sufficient as proof of the case, unless (says my learned friend) indeed Mr. Miller or Messrs. Fawcett, Preston and Company, or any other person that we choose to throw imputations against, come into the box and state their case and explain to the Crown everything which the Crown may choose to require explanation of. Unless that is done, (says the attorney general,) I ask you, the jury, to presume in my favor that certain circumstances and facts, which I agree do not in the least go to prove the case, that they will constitute a proof because they constitute a presumption," because, forsooth, the Crown choose to say, "We cannot prove the case of forfeiture; we cannot prove that an offense has been committed, but we can prove scraps and fragments here and there of things which in our judgment look a little suspicious, and we will throw, therefore, the whole burden on the other side of coming forward and proving our case." It is not our business to prove a case. We come here on a charge of misdemeanor. We come here on a charge of misdemeanor leading to a forfeiture. We ask the Crown to prove how it was that on a bright day in Liverpool their officers walked in and seized the ship, which they had no more right to than you, gentleman; or I ask the Crown, or the advisers of the Crown, to prove to the letter before an English jury that they had acquired clearly and distinctly the right to make the seizure which in point of fact they did make. I could not help, when I heard the opening of my learned friend, the attorney general, contrasting what my learned friend said, for the purposes of this case, with the doctrine which I had heard elsewhere, and from a very able expounder of the law in such cases, and of the duty of the Crown in such cases. I will take leave to read to you a statement of what was

supposed to be the duty of the Crown in such cases. I will take leave to read to you a statement of what was supposed to be a statement of what was supposed to be the duty of the Crown in putting into force the foreign enlistment act. That statement was made by one of the officers of the Crown. An accusation was made, and I speak of that which has been referred to to-day, and referred to in court. You know a great deal has taken place with regard to the Alabama, and all that has taken place about the Alabama is a matter of common information. The American government was very much dissatisfied that the British government did not try some parties about the Alabama. I am sure I have not the least idea whether any offense was or was not committed, but I know perfectly well the answer which was given in that case, and which was laid down upon the judgment of one well competent to tell us the mode of alleging a forfeiture or proceeding under the foreign enlistment act. The adviser of the Crown to whom I have referred said: "The United States government have no right to complain if the act in question (that is, the foreign enlistment act) is enforced in the way in which English laws are usually enforced against English subjects, on evidence and not on suspicion, on facts and not on presumption; I pray your attention to that,—“on facts and not on presumption;” “on satisfactory testimony, and not on the mere accusations of a foreign minister or his agent;” and if he had said “spies,” it would have been nearer the truth. Now, the officer of the Crown who laid before us those sound and constitutional principles was my learned friend the solicitor general, whom we have the pleasure of seeing here.

The SOLICITOR GENERAL. And he adheres to every word of that.

SIR HUGH CAIRNS. I know my learned friend too well to suppose that he would depart from a single word of a doctrine so sound and so constitutional as what I have read; and if he were not the counsel in this case, and involved in the exigencies in which counsel are sometimes involved, I know he would not depart from it for a single moment. But I ask you to apply that to the opening of his colleague, my learned friend the attorney general, whether he is applying that part of the doctrine “on facts and not on presumptions,” when he says, “I have not any facts, but I will prove something to you, and that will lead to presumption, and unless you have those who are accused of a criminal offense coming forward as witnesses, and being examined as witnesses, persons under a charge of committing a criminal offense, tendering themselves to be examined as witnesses, you will be kind enough to accept, not my facts, for I have not got them, but my presumptions, for that is all I have to offer you.”

Now, gentlemen, this reference to the act of Parliament leads me to ask you to consider a subject which is one of very great interest, and upon which I think you will not be unwilling to bear with me a little while; I mean the history and the policy of this foreign enlistment act, as far as it is necessary for us to consider it on the present question. It is a great and important question; a much greater question than the value of the ship *Alexandra*, because it is a question which will be found applicable not merely in the present case, but to a number of other cases which may arise in this country, and which will be found to be not only of the gravest but of the most essential importance to the mercantile interests of this country.

I ought, perhaps, just to take notice of what has been called the proclamation of neutrality in this case. It was read to you with some ceremony at the commencement of the case of the Crown, as if it had the slightest bearing on the case. We have the happiness of living in a constitutional country, with a constitutional form of government, with a sovereign who never transgresses that constitutional form of government; and I do not suppose that you will believe that the proclamation by the Queen was ever meant to lay down any law not to be found in the act of Parliament; and we find that all the proclamation did was to repeat the enactments of the foreign enlistment act, to inform the subjects of this country that there was such an act of Parliament, and that, war having sprung up, and this country remaining neutral, the provisions of that act of Parliament would have to be observed in the way in which the provisions of every other act of Parliament would have to be observed. Every subject of a country is supposed to know the laws of the country, whether they are made the subject of a proclamation or not; therefore we may put aside the proclamation as not bearing on the case.

Now, it is said, very truly, that an unfortunate war has sprung up between the two parts of what formerly were the United States of America. It is said that we are neutrals in that war, and think it is of the greatest importance that we should understand the duty of the subjects of this country, as the subjects of a neutral country, in a commercial point of view, because we may put aside any question of our duty with reference to our enlisting in the army of the belligerents, for I do not suppose that any person before me, except perhaps a few of the witnesses, have the least idea of enlisting in the army on one side or the other. There can be no doubt that enlisting in the army of a belligerent is an offense, but I rather ask you to consider the position of things in a commercial point of view. I say, subject to my lord's correction, but with very considerable confidence, and I think I will prove it to demonstration, that, putting for a moment what is called the foreign enlistment act out of the question, put-

ting it aside for the moment, beyond all manner or shadow of doubt it is the free and undisputed privilege of the subjects of a neutral power, there being a war between two belligerents, to trade with either or with both of the belligerents; to sell to either or both of the belligerents ships, and arms, and munitions of war, and every requisite for war which you can suppose in any shape or form. I say, beyond all doubt, that unless that privilege is limited by act of Parliament, it is clearly and beyond dispute the privilege of every subject of this country, this country being neutral in this war, to sell to belligerents, in both cases or in either, ships of war, ships not of war, munitions of war and arms, and every requisite which can be thought desirable for the purpose of carrying on the war.

Indeed, if common rumor is to be trusted, I am not sure that the side in this case which is represented by those who co-operate with my learned friends in this prosecution have not benefited and profited by this rule quite as largely as the other parties in the contest. But at all events they had a perfect right to do so, and nobody can find fault with them if they come to the best market where they can get every requisite for carrying on the war.

Now, I want you to consider how this act of Parliament came to be passed; because I think it is remarkable how strong a light it will throw on the whole form and structure of the act of Parliament. Now, I say, and I say it without hesitation, that the intention of this act of Parliament never was to fetter or to impair bona fide commerce in any way. The intention of the act of Parliament was this, and this only, to prevent warlike expeditions leaving the ports of this country, at a time when this country was neuter, issuing from the ports of this country in a shape and form in which they could do injury to either belligerent, and thereby enable one or other of the belligerents to come to the government of this country, and say: "Look at your port of Plymouth; there sailed out of that port on a certain day a ship fully armed ready to capture any ship she might meet with. Your ports are being used as places of safety and shelter; armed vessels can sail out, or transports or store ships can sail out, prepared to do all the mischief in war which a transport or storeship or an armed vessel can do."

The belligerent government would say: "Observe the consequences; we cannot pursue these vessels into your port; we cannot go into your ports to take out a privateer, and yet you allow a privateer to go armed from your ports at the same time that we cannot enter your ports to destroy that vessel." I apprehend that that was a very intelligible and clear principle, if we find that that was the principle which was proceeded on.

Now, gentlemen, what was the history of the act of 1819? It was referred to in a very cursory way by my learned friend, and I think we should have a more clear understanding about it. I dare say you have heard, although it is a little more remote from the present time, that the possessions of Spain which lie in the equatorial districts had revolted from the government of the mother country, and were struggling for their independence just in the same way in which the southern States are said to be struggling. At that time there was great interest felt for these revolted Spanish colonies. A great majority of the people in this country thought that they had been badly treated and oppressed, and that it would be a very desirable thing if they could free themselves from the mother country and set up a government for themselves; and it was the more remarkable because, our own war having come to an end, there were a great many retired military men in want of employment, and there was a great disposition in this country to get up expeditions in this country—to enlist men and to arm ships to be sent from the ports of this country to scour the seas in favor and support of these revolted Spanish colonies. And there was a gentleman of great note, one Sir Gregor McGregor, who was a sort of commander-in-chief in this country, and he marshaled his men, put his troops on board, and sailed from the ports of this country, and carried war across the high seas, and committed hostilities, and with very great injury to the mother country of Spain. The Spanish ambassador remonstrated; he said: "Observe the position we are in; you are our allies; our navy cannot go into your ports and make war there, but we see armed vessels issuing out of your ports, and they make war on the high seas, and we must ask you to put a stop to your country being made a place for the preparation of warlike expeditions."

I had the curiosity to refer to one of the historians who writes about that period, and perhaps, as the passage is not very long, you will allow me to read the passage from history, which in a few sentences describes the state of things at that time. I read from Sir Archibald Alison a passage as to the history of this country in the year 1819. He says: "Another subject of general interest was discussed in Parliament this year, which was that of the succors clandestinely furnished by the British to the insurgents in South America. Ever since the contest between the splendid colonies of Spain and the mother country had begun, in 1810, it had been regarded with warm interest in Great Britain, partly in consequence of the strong and instinctive attachment of its inhabitants to the cause of freedom and sympathy with all who are engaged in asserting it; partly in consequence of the extravagant expectations formed and fomented by interested parties as to the vast field that by the independence of those colonies would

be opened to British commerce and enterprise. So long as the war in Europe lasted, this sympathy was evinced only by an anxious observance of the struggle, for the physical resources of the country were entirely absorbed by the terrible contest with Napoleon. But when peace succeeded, and the armies of all the European states were in great part reduced, the interest taken in the cause of South American independence began to assume a more practical and efficient form. Great numbers of officers from all countries, wearied of the monotony of pacific life, or tempted by the high rank and liberal pay offered to them in South America, began to go over to the ranks of the insurgents, and ere long rendered their forces greatly more formidable than they had previously been. The English, prompted by the love of freedom, wandering, and adventure which seems to be inherent in the Anglo-Saxon character, were soon pre-eminent in this respect, and the succors they sent over ere long assumed so formidable an appearance as attracted the serious notice of the Spanish government. Not only did great numbers of the peninsular veterans, officers and men, go over in small bodies, and carry to the insurgents the benefit of their experience and the prestige of their fame, but a British adventurer, who assumed the title of Sir Gregor McGregor, collected a considerable expedition in the harbors of this country, with which, in British vessels and under the British flag, he took possession of Portobello, in South America, then in the undisturbed possession of Spain, a country at peace with Great Britain. This violent aggression led to strong remonstrances on the part of the Spanish government, in consequence of which the government" (that is, the English government) "brought in the foreign enlistment bill, which led to violent debates in both houses of Parliament."

This was the history of the foreign enlistment bill being brought into the House of Commons. I cannot help thinking that it is worth while observing the state of the country, described in a few sentences at that time by one of the greatest ministers we ever had, the author of the foreign enlistment bill, Mr. Canning. He had a great deal of opposition to contend with in the House of Commons, and he put the state of things with regard to the position of the country in this way. He said: "What would be the result if the House refused to arm government with the means of maintaining neutrality? Government would then possess no other power than that which they exercised two years ago, and exercised in vain. The House would do well to reflect seriously before they placed government in so helpless a situation. Do honorable and learned gentlemen really think it would be a wholesome state of things that troops for foreign service should be parading about the streets of the metropolis, without any power on the part of the government to interfere to prevent it; that that very moment such was the case in some parts of the empire, and he had but little doubt but that in a very short time the practice would be extended to London." And again he said, in a later part of the same speech: "Ministers did not apply to Parliament for this aid until they had tried, without effect, all the means which were in their power. If they were not now vested with the requisite authority, if before next summer the country should exhibit a scandalous and disgraceful scene of lawless bands of armed men, raised for foreign service, parading through the streets, let not the ministers be blamed, for they had warned Parliament of the danger, and had called on them to prevent it."

Therefore the kind of evil which was felt in the year 1819, and which was to be guarded against, was that of fitting out regular expeditions with arms and with troops in this country, some marshaling troops together and preparing ships to receive them, and arming ships for the purpose of carrying on a war on the high seas—that was the state of things which had to be dealt with at the time when the foreign enlistment act was brought in.

Now, gentlemen, I come to the act of Parliament itself, for the purpose of asking your attention to the information which the act of Parliament gives us on the subject. Now, you know it is a very convenient plan, in the first place, to see in the preamble, as it is called, of an act of Parliament, what it states to be the evil to be guarded against and to be remedied by the act of Parliament. And the preamble tells us this. It says: "Whereas the enlistment or engagement of his Majesty's subjects to serve in war on foreign service, without his Majesty's license, and the fitting out and equipping and arming of vessels by his Majesty's subjects for warlike operations, on or against the dominions or territories of a foreign prince, may be prejudicial to and tend to endanger the peace and welfare of this kingdom."

Therefore you will see that what is provided here is this: It is directed against his Majesty's subjects engaging in war on their own account. That is the essence of the offence as described in the preamble of the act of Parliament. The act of declaring war or peace is with the sovereign of this realm. If the sovereign chooses to remain neuter, it is not to be tolerated that some of his subjects shall say: "We will become belligerents on our own account; we will have a little expedition; we will marshal troops and arm ships: we will carry on war on our own account; and if we happen to find an enemy with whom we can cope, we will make plunder, and so benefit ourselves." I apprehend that is entirely a constitutional view of the position of the sovereign and of the subjects of this country. The sovereign is the arbiter of peace and war. The subjects have no right to interfere with the exercise of the rights of the sovereign, and

it is perfectly idle for the sovereign to say, "I choose to remain at peace," if the subjects of the country are each, according to their own will, to be allowed to engage in war and fit out warlike expeditions on their own account. Because if twenty or one hundred men in Liverpool choose to fit out a warlike expedition to attack and injure one belligerent, twenty or one hundred men in London may choose to fit out a warlike expedition to attack and injure the other belligerent, and you would have this state of things, the sovereign of this country saying, "I choose to remain at peace; my view is that there should be no war on the part of this country;" and you would have the whole or a great part of the subjects of the country engaged in war and carrying on expeditions against the will of the sovereign and on their own account. Therefore, as I said, that is the state of things to be prevented. That was the state of things in 1819; that was the state of things under which Sir Gregor McGregor was making himself a petty sovereign under the sovereign for the purpose of carrying on the war, and that is what is struck at under the act of Parliament. Carrying that view with us into the case which we have to deal with, I think we shall find a very clear and distinct explanation of the seventh clause. Now, in the first place, I will call your attention to this—that the gist of the offense which is spoken of in the seventh section, whatever the offense may be, is that the offense must be committed within the United Kingdom. If a subject of her Majesty does the act out of the United Kingdom, it is no offense at all; it is not like every other prohibitory act which we are acquainted with, because every other prohibitory act, if it prohibits a thing to be done, prohibits its being done by the subjects of her Majesty everywhere. But it is not so by the foreign enlistment act. It admits that the subjects of the Queen, if they are not in the country, may do what they please so far as the foreign enlistment act is concerned, and what is not to be done is only not to be done within the country. And that leaves out what I took the liberty of submitting: that the whole object of the act of Parliament of 1819 was to prevent the ports of this country becoming arsenals for the benefit of one or the other of two belligerent powers, out of which expeditions might issue in this way. They might issue out of the ports of one of the belligerent powers themselves. Therefore the seventh section begins with saying that the person supposed to commit the offense afterward described, must do it within some part of her Majesty's dominions, and the offense cannot be committed anywhere else.

The next very remarkable thing which I would venture to call your attention to upon this section is this: There is not the least prohibition against building a ship; there is not a word said in the section about prohibiting the building of a ship or vessel; there is not a word said about selling a ship or vessel. Beyond all doubt and controversy, consistently with every word in this section, you may build a ship or vessel in any way you think fit and with any purpose. I will add, although it is not at all necessary for my case to put the case so high, with any purpose you like. There is no suggestion in any part of the section that it is criminal; that it is an offense against the act of Parliament, to be punished by forfeiture or otherwise, to build or construct a ship. The only words used are words which suppose that a ship is to be built, because the words are "equip, fit out, or arm a ship or vessel," and I take it you cannot equip, fit out, or arm a ship or vessel until the vessel is built. It is assumed, therefore, that the building of the ship is a perfectly harmless act; whatever may be the meaning of the words afterward used, equipping, fitting out, or arming, is a matter to be done to the ship or vessel which is so supposed to be a ship or vessel that may be built.

Now I will go on, and I think you will see, when I read the section, that the next thing you must consider is this. I submit it to my lord, and I put it to you, gentlemen, as a matter I think you will quite follow, because it is not a matter of law at all, but a matter of common sense and understanding, that the meaning of this section and that which is described in it is this: It means throughout, that the person who is spoken of in the section, and who is supposed to equip, fit out, or arm a vessel, is the person who has the intent to cruise on his own account, or for his own purposes to cruise and to commit hostilities against a foreign nation with that ship or vessel. And it falls in exactly with what I have shown you was the policy and history of the act of Parliament, an act directed against persons doing those very things, fitting out, arming privateers, for the sake, with those privateers, of cruising and committing hostilities out of the ports of this country. Then you will see it is quite apparent that what is contemplated by this act of Parliament is this: there must be an equipping, furnishing, fitting out, or arming, or an intent to do that within the kingdom, and in such way that you should cruise and commit hostilities. I need not tell you the word "cruise" is a technical word. We, in common parlance, talk of cruising perhaps in a yacht; but cruising, coupled with the words "committing hostilities," is a technical term applied to vessels of war, which cruise for the purpose of committing hostilities. Therefore I apprehend that what you have laid down in this section you must narrowly and accurately carry with you in your mind in the consideration of this case. The only thing which this section strikes at is this: some person in this country, who has the contract of a vessel or a ship, who may use it in any way he thinks proper, and that person is supposed to fit out and arm a vessel, and to do it with the intention of committing hos-

tilities, he being the judge and the arbiter and determiner whether he will or will not cruise and commit hostilities. And you must have further this: the ship armed, or equipped, or fitted out in such a way as will make her such a ship, as well at the time she leaves this country, for that is the point, be competent and able to cruise and commit hostilities. Because, I say it with confidence, that it is, upon the history of this act of Parliament, entirely open to any person to build a ship in this way, to sell that ship, even and though she may be competent to be converted into a ship of war, to either of the belligerent powers; and the circumstance that he might know that after she was sold to the belligerent power she might be used in a particular way has nothing to say to it. He is not the person who arms and equips the ship to cruise and commit hostilities unless he has the intention of arming her in such a way as that when she leaves the port she will be in a state to cruise and commit hostilities.

Now, gentlemen, before I leave the act of Parliament I ought to fortify this argument by that which seems to me to reflect very much upon it. And here I will beg my lord's attention also to what I am going to submit, namely, the eighth section, because you have another section upon which you have not heard a word yet, which is not included in any of the counts of this indictment, but which seems to me to show in the clearest manner the object and intention of the act of Parliament. The eighth section deals in the case of actual ships of war about which there is no doubt at all, ships of war coming into harbors in this country, and wanting something in the shape of equipment, an addition to their inventories or their stores. It deals therefore with the case of a ship of a foreign country coming to do repairs in our own country.

Does it say that a ship of that kind that comes to one of our harbors shall have nothing furnished to her? No equipment furnished, no supplies furnished to it? Nothing of the kind. The only thing that it says is this: A ship of war coming into one of our harbors shall not have in our harbors the number of its guns increased, or the guns changed, smaller for larger, or an equipment for war furnished; not an ordinary equipment, but an equipment for war, leaving it nearly, therefore, at the will of any one in this country, with regard to the national ship of war of a belligerent state which comes into one of our harbors, to supply that ship with an equipment, with means of repairing sea damage, with masts and sails, provided you do not supply her guns, or warlike equipment, which of course would mean something in the nature of guns, or gun slides, and so on. We have heard how that clause has been acted on, because you will remember that very early in this unfortunate American contest there came a ship into the harbor of Southampton—I really forget whether she belonged to the southern navy or to the northern—I mean the Tuscarora. There were some of each. There was the Tuscarora, and there was another ship, the Nashville. One or other, or both, had sustained sea damage. They were allowed to repair and refit in the harbor of Southampton, because that with which they were repaired or refitted was not a warlike equipment, was not an increase or alteration of guns, and was, therefore, perfectly legal and perfectly harmless within the foreign enlistment act.

But I will not stop there, because I will show you that this which I submit has been the construction of the act of Parliament and the meaning and the object of it, although we have not had in this country a case tried under this act of Parliament; has been the meaning attached to the act of Parliament by the statesmen and lawyers of this country from time to time, and by authorities to which those who promote the present proceeding of the Crown will have respect. I mean the authorities of the American courts. A similar meaning has been affixed to the American foreign enlistment act, which, you will remember, the attorney general told you was passed at two different intervals in the United States, and which might be taken to be the precursor and the model or exemplar of our act of Parliament. There is a very remarkable thing, which I find in one of the American state papers, which I will refer to here, upon the subject, merely to show you the footing on which this doctrine has been put in America. At the very time when the first American enlistment act was passed, the great and illustrious man who then swayed the destinies of America, I mean Washington, was the President; and he had ordinances issued to the various ports in America, informing their own officers what things were lawful and what were unlawful with regard to the equipment of vessels, there being at that time a war in which America took no part. Now, I will just read you in a few sentences the instructions issued by Washington to the officers of the outports. In the first place he says this: "Equipments in the ports of the United States of vessels of war," that is the first thing, "in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or to war, are deemed lawful." There is no harm in that. If the equipments are of a doubtful character, if they would be useful to a vessel of war, if they would be useful also for purposes of commerce, then, if they are useful to a vessel of war, those equipments may be made. Then, further: "Equipments in the ports of the United States by any of the parties at war with France of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful." And in like manner,

"Equipments of any of the vessels of France in the ports of the United States, which are doubtful in their nature, as being applicable to commerce or war, are deemed lawful."

Therefore we have, in the very first year when the American enlistment act passed, this construction put upon it by the greatest man America ever saw, Washington. You have him pronouncing that which is deemed unlawful as simply putting on board munitions or arms of war, and anything which may serve the twofold purpose, and which is useful to either purpose, is perfectly harmless.

But it does not stop there, because I will show you authorities which come much nearer home, and which are even much clearer than that. I will tell you what happened in this country in 1830, which was at a time much nearer the foreign enlistment act, and when there were many men alive who had taken part in the foreign enlistment act. In 1830 the war in Portugal was going on, the civil war between Don Miguel and the former Queen of Portugal. There were a great many parties in this country who were opposed to Don Miguel, and there were certain persons who were supposed to be very much in his favor. There came to the shores of this country, I think Plymouth, some refugees from Portugal, and they had some ships there, and they lived at Plymouth, and ultimately they sailed from Plymouth in their ship. They had no arms in their ship, but it turned out that they had sent their arms to one of the Azores, Terceira, in some other vessel, and they intended, no doubt, when they got there, to take their arms on board their own vessel.

There was an attempt made to stop them sailing from this country, but they were allowed to sail. But when it was found that they were at Terceira, and that they were going to land there, (Terceira at that time being in possession of Don Miguel,) some of our cruisers fired on them and intercepted them. A very stormy debate took place in the House of Commons as to whether our cruisers were justified in doing this. I will tell you for what purpose I am mentioning it. It was said then on the part of the government, "Well, but we have a right to stop these vessels off Terceira, because it is quite true they did not go away from the shore of England in an armed vessel, but they did the same thing; they sent their armament before them, and they sent to take it up, and that was clearly an offense within the foreign enlistment act." They might have been tried for it; and that was the defense made for all the cruisers firing on them off Terceira. At that time the House of Commons had the benefit of the advice and assistance of a very eminent man, Mr. Huskisson. He had been the colleague of Mr. Canning at the time the foreign enlistment act was passed. Some person said in the debate that the policy of Mr. Canning would have approved of what was done with reference to those ships off Terceira. It is to Mr. Huskisson's own policy in the foreign enlistment act that I now want to call your attention. Now, what Mr. Huskisson said was this: He said he was induced to trouble the House by the reference that had been made to Mr. Canning and Mr. Canning's views on the enlistment act. He said: "It might be supposed from his right honorable friend's (Sir Robert Peel's) remarks that during the fifteen years we had been at peace our neutrality had never been violated. Had he forgotten, then, the repeated complaints made by Turkey, and had he forgotten that to those complaints we had constantly replied: 'We will preserve our neutrality within our dominions, but we will go no further.' Turkey did not understand our explanation, and thought we might summarily dispose of Lord Cochrane and those other subjects of his Majesty who were assisting the Greeks. To its remonstrances Mr. Canning replied, and his right honorable friend, being then a colleague of Mr. Canning, must be considered a party to his opinions: 'Ships may leave this country as matter of merchandise, and, however strong the general inconvenience, the law cannot interfere to stop them. It is only when the elements of armaments are combined that they come within the purview of the law; and if that combination does not take place till they have left this country, we have no right to interfere with them.' Those were the words of Mr. Canning, who extended the doctrine to steam vessels and yachts that might afterward be converted into vessels of war; and that appeared quite consistent with the acknowledged law of nations. When his right honorable friend placed so much reliance on the authority of Mr. Canning, he could only account for his having overlooked this remarkable passage by his perceiving that it contained a complete contradiction of the doctrine laid down by his right honorable friend. His right honorable friend made it a part of his case that the elements of armament were not combined when the refugees left our shores for Terceira, and, according to the opinion of Mr. Canning, therefore, the government had no right to interfere with them." And further on Mr. Huskisson proceeds to say: "He would tell his right honorable friend that if he acted on this doctrine and pursued such a policy, he would not keep for ten months, much less ten years, this country out of war. At the very moment he was speaking arms and clothing were about to be sent out of this country to belligerents. Were they to be stopped, or were they to be followed and brought back? He believed the answer would be, No; and if it were Yes, of what use, he would ask, would be our skill in building ships, manufacturing arms, and preparing instruments of war, if wrongly to sell them to all belligerents were a breach of neutrality."

Gentlemen, as we are told, and told truly, that there never was a case before tried in one of these courts where the policy and construction of the foreign enlistment act has been brought under the notice of the court, surely, at all events, we may look to this, that, in 1830, a minister, Mr. Huskisson, says: "Yes, truly, there never has been a case tried, but minister after minister has been applied to to interfere on the principle and policy of the foreign enlistment act. Mr. Canning has been applied to on behalf of the government of Turkey, and what has Mr. Canning said again and again—the minister who introduced the act in question—"that unless you show me that there is the combined element of armament, so that the ship may leave this country as from an arsenal, armed and equipped and ready for war, if that combination does not take place in this country," there is no offense under the act of Parliament;" and I extend that to steam vessels and yachts equally. That is, they are capable of being converted into vessels of war; and if that were not so there would be an end to the advantage which this country has in the building of ships, and the country, in place of being preserved neutral, would not be kept out of war for one year if you could say that those making their livelihood by such means were prevented from selling, so long as they sold equally to all comers; because you may depend on it, that, let the law be laid down as the Crown, for the sake of the United States consul, would ask it to be laid down, and you will put an end in the most summary way to one of the greatest inducements which exists to continue the subjects of this country neutral, and of the peace; for, if you show the subjects of this country that their commerce is to be tampered with and harassed at the will of one or other of the belligerent powers, the people of this country will say: "Let us have done with neutrality, we had much better be at war; we shall escape the surveillance of the United States spies; we would rather be at war than be in the position of those whose acts are to be regulated and under the control of the United States consul."

Now, I go further. I said I would show you an authority which at all events the United States government cannot dispute, and I will tell you a very remarkable case* which occurred in America on that point. There was a ship in America called the *Independencia*. She had made a prize at sea somewhere about the year 1821 or 1822, and the question was whether she had made a lawful capture; and it was a suit in one of the courts, in the Supreme Court of the United States. Now, the *Independencia* had no right to make that prize or to make that capture, and I will tell you why. They said, the *Independencia* herself has broken the foreign enlistment act. She left in a time of war, when there was war between two foreign countries, and when the United States was neutral. She left a port of the United States as an armed vessel, to be sold to and transferred to one of the belligerent powers. Therefore, having so left the port, any prize made at sea would not be a lawful prize. Now, I will state what is said by an eminent judge, well known to my lord, Mr. Justice Story. The volume from which I am reading is the 7th Wheaton's Reports of the Supreme Court, page 334. Now, the story about her history is told in a sentence, and told by the learned judge. He says, in January, 1816, this *Independencia* "was originally built and equipped at Baltimore as a privateer, during the late war with Great Britain, and was then rigged as a schooner, and called the *Mammoth*, and cruised against the enemy. After the peace she was rigged as a brig and sold by her original owners. In January, 1816, she was loaded with a cargo of munitions of war by her new owners, (who are inhabitants of Baltimore,) and being armed with twelve guns, constituting a part of her original armament, she was dispatched from that port, under the command of the claimant, on a voyage, ostensibly to the northwest coast, but in reality to Buenos Ayres. By the written instructions given to the supercargo on this voyage, he was authorized to sell the vessel to the government of Buenos Ayres, if he could obtain a suitable price. She duly arrived at Buenos Ayres, having exercised no act of hostility, but sailed under the protection of the American flag during the voyage. At Buenos Ayres the vessel was sold to Captain Chaytor and two other persons; and soon afterward she assumed the flag and character of a public ship, and was understood by the crew to have been sold to the government of Buenos Ayres; and Captain Chaytor made known these facts to the crew, and asserted that he had become a citizen of Buenos Ayres; and had received a commission to command the vessel as a national ship, and invited the crew to enlist in the service; and the greater part of them accordingly enlisted. From this period, which was in May, 1816, the public functionaries of our own and other foreign governments at that port considered the vessel as a public ship of war, and such was her avowed character and reputation." Therefore, you see the long and short of it comes to this: Buenos Ayres was at war at that time with Spain. The United States were neutral. This *Independencia* leaves an American port, Baltimore, belonging to American owners, built at Baltimore, fully equipped and armed. Therefore it is a stronger case than any I have suggested to you yet. But then she was sent, no doubt, in order to be sold to one of the belligerents; sent to Buenos

* *Vide* 7 Wheaton, pp. 283-335; ed. 1822. Case of the *Santissima Trinidad* and the *St. Andre*, seized by the vessels *Independencia del Sud* and the *Altravida*.

Ayres, under the care of the captain, who was authorized to sell her to one of the belligerents, of course, in the way in which you might sell arms to one of the belligerents. What does Mr. Justice Story say? He says: "It is apparent that, though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure; contraband indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage, she would have been justly condemned as a good prize." That is, if one sends out guns or arms to the United States of America, the United States might capture them on the way as contraband, and it would be no offense in sending out arms. "But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale." Now, why is that? Why, of course, because the construction of the foreign enlistment act is adopted which I submitted to you—that you must find an intent on the part of the person who furnishes, fits out, and even arms the ship, to cruise and commit hostilities; and if his intent is not to cruise and commit hostilities at all, but to sell his ship as a commercial speculation, "there is nothing" (says Justice Story) "in the foreign enlistment act or in the law of nations" which prevents that being done. "It is a commercial adventure which no nation is bound to prohibit; and which only exposes the persons engaged in it to the penalty of confiscation;" that is, confiscation by being taken at sea, as a ship being contraband, not confiscation in the United States of America. "Supposing, therefore, the voyage to have been for commercial purposes, and the sale at Buenos Ayres to have been a bona fide sale—and there is nothing in the evidence before us to contradict it—there is no pretense to say that the original outfit for the voyage was illegal." Now, this is a case, I say, very much stronger than anything we have had in the present case. This is a case which never has occurred perhaps even in this country in so strong a shape. Citizens of the United States of America, while America is neutral, fitting out a ship and arming her to the teeth, and sending her to the belligerent power for the purpose of being sold, yet because the ship is not fitted out or equipped or armed with the intent of the person who is the owner and the director of the movements of the vessel to cruise and commit hostilities, but nothing but this, the sale of a commercial adventure—because that is so, (says Mr. Justice Story, the greatest authority in law which the United States perhaps ever possessed,) there is nothing illegal in that, nothing in that contrary to the foreign enlistment act, or to the law of nations. I will mention another, a very short authority, which also occurred in America.

LORD CHIEF BARON POLLOCK. You probably will not be able to finish to-day, therefore I propose to adjourn now. We probably shall be able to finish this to-morrow at a reasonable hour.

Adjourned to to-morrow at 10 o'clock.

THIRD DAY, WEDNESDAY, June 24, 1863.

SIR HUGH CAIRNS. May it please your lordship; gentlemen of the jury: You will perhaps recollect that when we adjourned yesterday I had taken the liberty of calling your attention, in the absence of any decisions in this country on the subject of the foreign enlistment act, to what has been said by a most renowned statesman, Mr. Huskisson, with regard to that act, its policy and its intention, and with regard to the way in which it has been acted on by the ministers of this country up to the year 1830. I then showed you, from the decision of the Supreme Court of the United States, as given by Mr. Justice Story in the case of the *Independencia*, how that most eminent judge had pointed out in a case which you would suppose one of the most extreme cases you could put, namely, that of a ship of war equipped and armed and fitted out in a port of the United States, when the United States were neutral and other states at war, and that ship sent to one of the belligerent powers to be sold to and employed by that belligerent power, that inasmuch as this was merely a commercial adventure, and those who sold the ship had themselves no design to engage in war, but simply to sell that which was a necessary of war, it was a mere commercial adventure, and did not come at all within the meaning of the act of Parliament. There was another case, which occurred some years before the *Independencia* occurred, and which occurred during the time of the English war, at the time when Great Britain was at war with France. During that time there was a ship that was called the *Alfred*, and the question was whether she had been fitted out as a privateer in a port of the United States in violation of the neutrality of the United States, and the foreign enlistment act of the United States, and with a view of being engaged in the war between France and England. That case, I may mention for the information of my lord, is reported in the first volume of Curtis's Reports of the Supreme Court of the United States, at page 234.* But the whole statement of the case lies in a sentence or two, which I will take the liberty of reading to you. Gentlemen, this is what we find in the report of that case: "It is not a violation of the neutrality laws of the United States to sell a foreigner a vessel built in that country, though suited to be a privateer, and having some equip-

ments calculated for war but frequently used for merchant ships." The allegation in this case, as supported by the evidence, was that the privateer which took the British prize in question had been built in New York, with the express view of being employed as a privateer in case the then existing controversy between Great Britain and the United States should terminate in war; that some of her equipments were calculated for war, though they were also frequently used for merchant ships; "that the privateer was sent to Charleston, whence she was sent to a French citizen," France and England being at war at the time; "that she was carried by them to a French island, where she was completely armed and equipped, and furnished with a commission"—that is to say, she was partly equipped and partly fitted out for war in the United States; then taken to a French island, and arms put on her while there; "that she afterward sailed on a cruise, during which the prize was taken and sent to Charleston;" and the question was whether she had violated the law of America. The learned counsel for the plaintiff in error "contended that this was an original construction or outfit of war, and that if it was tolerated as legal it would be easy by collusion to subvert the neutrality of the United States and involve the country in a war." That was the argument of the counsel who filled the position there which my learned friends the counsel for the Crown fill in this case.

Now what did the court do? "The court, however, without hearing the opposite counsel, directed the decree to be affirmed," that is to say, they decided that there was nothing whatever illegal in the matter, and refused even to call upon the counsel on the other side to argue the question.

Now, gentlemen, there are those two authorities from America, the United States, the country whose minister it is who promotes the prosecution in England; and I appeal from his view of the law to the view taken by the Supreme Court in his own country. I said yesterday that I would give you a further instance of the view that has been taken by statesmen of this question.

LORD CHIEF BARON. Will you give me the reference to the case you last cited?

SIR HUGH CAIRNS. Your lordship will find it in the first volume of Curtis's Decisions of the Supreme Court of the United States. I have a print of the whole case, which I can hand up to your lordship, if you desire it; it is Curtis's Reports in the Supreme Court; there is another set of reports in another court, which I do not refer to.

Now, gentlemen, I will show you what a statesman, and one of the most eminent statesmen in this country in much more modern times, has thought of this question, and thought of it, too, with reference to the transactions which are going on every day. I hold in my hand a public document, a communication from Earl Russell, the secretary of state for foreign affairs, to the American minister. He argues the question upon the foreign enlistment act and the law of this country, and he cites to the American minister the two cases which I have taken the liberty of laying before you, the *Independencia* and the *Alfred*. And then what does he say? He appeals to the American minister upon the authorities of his own country. He says: "It seems clear, on the principle enunciated in these authorities, that except on the ground of any proved violation of the foreign enlistment act which those cases decided had not been violated in those cases, her Majesty's government cannot interfere with commercial dealings between British subjects and the so-called Confederate States, whether the object of those dealings be money, or contraband goods, or even ships adapted for warlike purpose."

Well, now, gentlemen, that is the opinion of a minister of the Crown at the present day. But I will not stop there; I will appeal to the opinion of a legal authority in this country, as high as any we possess, not given in this case, but given in general terms. I hold in my hand a speech made in the House of Commons, in which the solicitor general says: "It would be a great mistake to suppose that the foreign enlistment act was meant to prohibit all commercial dealings in ships of war with belligerent countries. It would be a great mistake to suppose that. It was not intended to do so. Two things must be proved in every case to render the transaction illegal; that there has been what the law regards as the fitting out, arming and equipment of a ship of war, and that this was done with the intent that the ship should be employed in the service of a foreign belligerent. But it would be a great mistake to suppose, in general terms, that the foreign enlistment act was meant to prohibit all commercial dealings in ships of war with foreign countries." And referring to the case which has been so often referred to before you—namely, the *Alabama*, which, as I have said, we are not trying here, but which you have heard so much about, the solicitor general says: "Were our government wrong in not seizing the vessels, the circumstances disclosed in the case tried before Mr. Justice Story, of the *Independencia*, were so far exactly the same as those which occurred in the case of the *Alabama*, that in the absence of any further evidence, the seizure of that ship would have been altogether unwarrantable by law; she might have been legitimately built by a foreign government, and" (I pray your particular attention to these words) "though a ship of war, she might have formed a legitimate article of merchandise, even if meant for the Confederate States."

Now, gentlemen, there is a cloud of authorities, authorities of statesmen in olden

times, at least in a past generation; authorities of statesmen in the present generation; authorities of the legal advisers of the Crown at the present day, and authorities of the Supreme Court of the United States, whose minister promotes this indictment; and every one of those authorities concurs in saying that the object and intention of the foreign enlistment act was not to prevent any commercial speculation in ships, which even might be made available afterward as ships of war, and that you must have brought home to the person who is accused of a violation of the foreign enlistment act proof, and clear proof, that he was a person, or that they were persons, who intended to take, and that they took part, in the war going on between the two countries. I think that will be sufficient for the purpose of leading you to consider what the purpose of this statute was, and what is the construction put upon it, and the view taken of it from time past down to the present time. But I really do not think that, as to this case, we shall ultimately be embarrassed by any question of law upon the point, because, as I view the evidence which has been brought forward, and which I will lay before you shortly, it is beyond all doubt that in this case it is not proved by the Crown that a forfeiture has been incurred; but I think I may say that it has been disproved by the Crown that there was any ground whatever for saying that there was a forfeiture.

Now, gentlemen, I will ask your attention, as briefly as the importance of the case renders it possible; it may be done, I think, in a reasonable compass; I ask your attention to two questions upon the evidence, and what is the state of the case upon these questions? These questions I believe, will be found to exhaust everything to which it is requisite that you should turn your attention upon the evidence. The two questions which I will ask you to consider, and to which I ask you to apply the evidence, are these. In the first place, I will take the question, "Was the ship fitted out and equipped and furnished in this country, or intended to be fitted out, equipped, and furnished in such a manner as to be ready to cruise and commit hostilities?" The next question is as regards the ship, "Was it done?" The second question will be, "Was she equipped, or intended to be so, with the intent that she should be employed by the Confederate States to cruise and to commit hostilities against the federal States of America?" To those two questions I will ask your attention.

LORD CHIEF BARON. I am afraid I have not the questions exactly as you put them.

SIR HUGH CAIRNS. The first question is, "Was she equipped, fitted out, or furnished in this country, or intended to be so, in such a manner as to be ready to cruise and commit hostilities at all against anybody?" The second question is, "Was she equipped, fitted out, or furnished with the intent that she should be employed by the Confederate States to cruise or to commit hostilities against the federal States?" Of course your lordship will see, and you, gentlemen of the jury, will see that these two questions will involve in them the further consideration of who it was who is said to have equipped or fitted out, or been the directing hand in equipping or fitting out the ship in question. That will naturally be involved in the discussion of this question.

LORD CHIEF BARON. I am not sure that these words do not mean pretty nearly the same thing, "equip, furnish, fit out, and arm." It has been suggested that three of them applied to one vessel, and the fourth one applied to a ship of war, I think.

SIR HUGH CAIRNS. To a ship of war, my lord; that would be a question.

LORD CHIEF BARON. There is one of those expressions upon which this remark may be made. I think "fit out" or "furnish," in the French language means the same as "arm."

SIR HUGH CAIRNS. That would be a question of law upon the indictment, which I am not going to consider.

LORD CHIEF BARON. My impression is that they are all meant to signify the same thing.

SIR HUGH CAIRNS. For the purpose of my argument, and for the purpose of what I have to lay before the jury, I am quite willing to argue upon that assumption.

LORD CHIEF BARON. It strikes me that they are all various expressions, which meant that the vessel is put into a condition to be useful for war.

SIR HUGH CAIRNS. Quite so, my lord. I believe that will be as convenient and at the same time as accurate a mode as any other to look at the case and the evidence in the case. I am quite willing to accept your suggestion, and deal with the case on that footing.

LORD CHIEF BARON. "Shall, without the leave of her Majesty for that purpose first had and obtained," and so on, "equip, furnish, fit out, or arm, with intent that she shall be employed to cruise or to commit hostilities." I think that they all mean the same. I forget exactly what "arm" means; I think it means to equip a vessel.

SIR HUGH CAIRNS. If there be room for legal argument upon that point I do not desire to raise it now; it will be raised, if it is ever necessary, in another form. I will accept entirely your lordship's suggestion for the purpose of my present observations, and I will take the words "equip, fit out, furnish, or arm" as a simple ringing of the changes upon the phrases which might be used to describe a ship prepared to cruise and commit

hostilities. That would disembarass the question for the present, at all events, of any technicalities as to the meaning of those words.

Now, gentlemen, let us look first at the evidence upon this point, the case of the ship. I confess that that is the part of the case which one has the most pleasure in dealing with, because you have to deal there with witnesses of some character and respectability. I refer to Captain Inglefield, an officer in her Majesty's navy, of whom we must all be proud; and I refer also to Mr. Green, who appears to be a very respectable man in his way; he is a repairer of or a dealer in ships at Liverpool. Those are the two witnesses upon that point. Let me remind you what Captain Inglefield said, because I suppose his evidence may be taken as having stated fairly what ought to be stated and laid before you upon this point. What did Captain Inglefield say? He said he had inspected the ship; he said she might be used as a yacht; she was easily convertible to a man-of-war; she was strong enough for that; she had accommodation for men and officers; she was quite capable of being converted to a man-of-war. There was no preparation when he saw her for fittings for guns; there was no preparation for guns. She was of sufficient strength to receive guns, but she had no appurtenances indicating that guns were intended to be put on board. She had no ring bolts on deck in which to travel the guns; indeed there would be no difficulty in adding those appurtenances; she might be used as a yacht. I agree, he said, for want of stowage room she was not a vessel prepared to carry a cargo as a merchant ship usually carries a cargo; she might be used as a yacht; she might be converted into a man-of-war; she was not a man-of-war; she was easily convertible when he saw her; there were no appurtenances for guns, though she might be converted to receive guns.

Now, gentlemen, when we talk about the convertibility—

LORD CHIEF BARON. I have not a note of the precise day or time of that.

MR. KARSLAKE. It was on the first day, my lord.

LORD CHIEF BARON. I mean the precise day or time when he saw her.

SIR HUGH CAIRNS. Your lordship is quite accurate; he did not give the day, but he said it was after the seizure, as I understand.

MR. ATTORNEY GENERAL. When she was in the state in which she was at the time of the seizure.

SIR HUGH CAIRNS. I am quite willing to assume that she was in the state in which she was at the time of the seizure.

Now, gentlemen, when we talk of the capability of a ship or vessel for being converted into a man-of-war or a gun-boat, we must, I think, be very careful in remembering what that means. I do not know whether you remember—I have a very lively remembrance of it—when this country was in very considerable alarm on the question of invasion a few years ago, and when there were a great many schemes afloat for the purpose of putting the country into a state of defense, an important proposal which was made and very much taken up in the House of Commons, and ventilated there by an eminent ship-builder in Liverpool, whose name has been mentioned in these discussions, and who is now a member of the House of Commons. He said: "You may be laying out your thousands and millions of money in building your boats, but I will convert all the tug-boats in the Mersey and in the Thames into gun-boats for £250 apiece, and I will do that in a week." Then the government, as I remember, took up the project and considered it, and had the tug-boats inspected by their surveyor. What was the argument that was used when the government was pleased, in the House of Commons, to adopt that proposal? The government did not say: "We do not think that that can be done; our surveyors say that it could not be done." Quite the contrary, they said: "It is so feasible a proposal, and it can be done in so short a time, a week or ten days, and it can be done at so small an expense, namely, £250 a gun-boat, that there will not be the least occasion for doing it until the exigency arises. We can do it whenever we like, and by doing it we can in that short space of time protect every one of our ports and rivers by a fleet of tug-boats, prepared and strengthened to receive a gun or two guns, and to take their places in rivers as gun-boats."

Gentlemen, that shows how easily you can deal with a question of this kind when you once take the step of talking about converting boats into anything into which they suppose a vessel can be converted. But the question is, what is she as she is in this country, when you find her where she is being built and fitted out? Is she there a vessel of which you can say: There is a vessel equipped, outfitted, and furnished and armed, prepared to cruise and commit hostilities? I say that is not proved, but it is disproved by the witness who comes forward and says: "She can be converted to another purpose, because she is not at present adequate or fit for that purpose."

But, gentlemen, I wish to call your attention to this: What were the matters to which Captain Inglefield referred, when he said that she had in her this capability of being converted into a man-of-war or a gun-boat? He referred to this: He said she has thick bulwarks, she has strong beams, she has the beams close together, and she has got her planking of a particular kind; she has got a strong rudder-post. I believe those were every one of the matters to which Captain Inglefield referred. But, gentlemen, are those equipments? Are those outfittings? Are those furnishings? Above

all, are those armaments? Nothing of the kind; that is part of the building of the ship. Now, I pointed out to you (and you will see the importance of the observation now) when I was beginning to consider the provisions of the act of Parliament, that there was not in the act, or in any part of it, one word prohibiting the building of ships for any purpose whatever. Carefully does the act abstain from saying that it shall be unlawful, or an act prohibited in any person, to build or to finish a ship in any way applicable for any purpose which he thinks fit. The act takes it up at a different point; it assumes the ship to be built and finished as a ship, and then it speaks of the fitting out, the equipping, the furnishing, and the arming with intent to cruise or commit hostilities; therefore, I care not one rush about the planking, or the beams, or the rudder-posts, or any other parts of the ship which are parts of a ship as a complete ship, and without which there could be no ship at all; that is not what the act points to, and I cannot help being struck by the course which has been taken by the Crown in this matter. Did they venture to ask Captain Inglefield, who more than any one could have told us, what is the equipment of a ship? Did they venture to ask one single question of that eminent officer in the navy such as this: "What do you call the fitting out of a ship?" Did they venture to ask him: "What do you call the furnishing of a ship?" or "What do you call the equipping of a ship?" Not a word of it.

Gentlemen, do you not think that if the Crown could have got any officer in the navy to say: "I will show you what we call the fitting out, and equipping, and the furnishing of a ship, and I will show you things on this ship which are parts of the fitting out, and equipping, and furnishing of a ship," they would have put the question and have got an answer? But the Crown put questions to Captain Inglefield only with regard to a ship built upon the stocks as a hull, and there they left the case; they did not go one iota further. And when Mr. Green, the ship-builder, who has not built for upward of twenty years, and who thinks that all improvements in ship-building ceased twenty years ago, and that we have been going down hill ever since that time, and that our ships now are very much worse than they were twenty years ago, said: "I saw preparations for stanchions for hammock nettings;" and then I began to suppose that it was intended to get Mr. Green to say that hammock nettings and the stanchions for hammock nettings are never used except in a ship of war, and therefore here was a preparation for a ship of war; but Mr. Green said nothing of the kind; he said stanchions for hammock nettings may have been originally wanted to prevent the shot coming into the ship, but merchants have adopted them; they are required for purposes of cleanliness, for hanging out the linen, and so on, to be aired and ventilated; and although he said that they were not used universally in the merchant service, he said: "There are many occasions in the merchant service of their being so used." Therefore that will be sufficient to dispose of the case as I understand it. The case of the Crown has hardly been launched, to use a phrase which is somewhat analogous to what we are speaking of; the Crown have not launched the case as to any furnishing, fitting, and equipping of the ship; they have brought us to consider what the build of the ship as a hull is, and there they have left the case. I say that the evidence upon that point, even as to the build of the hull, amounts to this and this only; not that the ship is a ship of war, or that Captain Inglefield is prepared to say that she was fitted out and ready to cruise and to commit hostilities, but that she could be converted like the vessels in the cases I have read to you, as indeed might every ship in the kingdom be converted or be changed, with more or less advantage, some more easily and some less easily, some at more outlay and some at less outlay; this ship, like all others, might be changed into a ship of war, or be furnished or equipped as a ship of war at that time; that, I say, is not only not proved by the witnesses, but the witnesses have proved the very contrary, and put an end to it.

Now, gentlemen, I say, that that disposes of the first question you had to consider on the evidence; there are no other witnesses upon that point. You will judge for yourselves upon the testimony of those two gentlemen how the matter stands; that question alone, I say, is sufficient to decide that the accusation which has been brought by the Crown in this case is such as I present to you.

Now, gentlemen, I come to the second point of the case, to which I ask your very particular attention, because that is a point which goes not merely to the merits of the case, but to cases which may arise to-morrow, or the next time, at every time and every moment of the year in this country. I mean the question of the state of the evidence in this case as to any intention on the part of any person with regard to this ship, that she should be employed by the confederate government to cruise and to commit hostilities against the federal States. Now, in the first place, I must remind you of the witnesses who are the witnesses on this part of the case, and their character, and the manner in which they come forward to give their evidence. I find, gentlemen, upon this part of the case we have got these witnesses on the part of the Crown, and these only; we have five discharged workmen; we have got one crimp, and we have got two informers or spies. Now, that is a very handsome and presentable array of witnesses to prove a Crown case—five discharged workmen, one crimp, item two informers or spies—and they are the persons who are to prove an intention on the part of respectable

merchants to commit an illegal act. Before I proceed to consider the evidence, I want you to consider for a few moments, first of all, the probability of the case without the assistance of these bright luminaries in the world of evidence. In the first place, do you think that such of the facts of this case as are proved beyond all doubt are such as to lead to a supposition beforehand that anything illegal was intended?

Let me remind you of what has been done about the building of this ship. Was anything secret or concealed carried on about her? In the first place, where was she when she was built? She was in an open building yard in Liverpool—open in this sense, I agree, that there was a gate, as most ship-building yards must have, and a porter at the gate. The porter was called here. What did he say? "Had persons written passes or orders to come in?—Nothing of the kind; any one came in who could give any excuse for coming in; they did not even give their names. All I had to do was to let them in." And take notice that the gate was not a gate to be promiscuously open, but there was no pass, no voucher of any kind required; he mentioned that there were some who did and some did not give their names; he had nothing to say for them; he was not asked, and could not venture to say that there was any kind of concealment or secrecy practiced with regard to the persons who come into the yard; they might come in and did come in as spies, and see what they could see; there was no kind of concealment. Now what is there about the ship when she left the yard? She is put into one of the public docks at Liverpool, the Toxteth Dock, under the care and superintendence of that eminent board who rule all the docks at Liverpool. The public may go in and watch all the work done upon her, and what was going on on board, as it seemed good to them, and come in and out and see all that is done, without any attempt at prevention on the part of those who are represented now by the Crown to have been all the time intending to commit some illegal act. Now about the works of Messrs. Fawcett, Preston and Company, where the engines were being prepared. Was there any concealment there? You will remember what a witness said upon that. He said that there were a great many people coming in and out, and he did not know who came in and who went out when the works were going on; they were seen freely. There is not one of those discharged workmen who came here to make out the case of the Crown who says there was the least attempt ever to prevent us or anybody else from seeing the work that was going on, or judging, as far as we were able to judge, of the meaning and intent of anything that was going on there.

Now, gentlemen, can you believe it possible that manufacturers, if you could suppose that they had an object or an intent to break the laws of the country in this respect—I say, is it possible to suppose that they could have carried on this work in the open light of day, where it was accessible to any one who chose to look at it, if they thought all the while they were doing something contrary to the law, and which, therefore, ought to be kept secret?

Now with regard to Mr. Miller, the ship-builder, about whom I shall have something to say presently. With regard to Messrs. Fawcett, Preston and Company, is it suggested, from beginning to end, that they were persons who had sympathies with one belligerent or the other, with the northern or the southern States? That they had any motive to go out of their way to incur risk and to subject themselves to a charge of misdemeanor, or any charge of any other kind? That they had any motives or sympathy in the case, or that they had any desire from first to last, except to carry on the trade in which they are engaged, and to do that which, as honest citizens, they ought to do in obedience to the laws? There is no suggestion of the kind with regard to them.

You have heard, gentlemen, a great deal about the Alabama in this case. You have heard the time when she left Liverpool; you have heard, more or less, of what has been done by her since, and the great discussions which have arisen about the legality or illegality of her proceedings in this country, which I say again we have not to try here and know nothing about. I appeal to those facts for my purpose. It was perfectly well known in Liverpool; it was perfectly well known before this ship, the *Alexandra*, was built, that the United States government were on the alert; that they were alleging that they had a right to prevent, and would endeavor to prevent, any infraction of the law which, by spies or otherwise, they could discover to have taken place. But after that, knowing perfectly well what the temper of the representatives of the United States in this country was, and what the intention was which they had with regard to doing everything they could to stop anything which they could make out to be an illegal act in this country; in the face of all that, this work was conducted in the open light of day, as I have described, and without any kind of secrecy or obstruction to inspection. Those are only circumstances which you will bear in mind, and they are not conclusive in the case; but they are circumstances not unworthy to be regarded when we approach the consideration of the evidence tendered on the part of the Crown.

Now I come to the next point upon this evidence, which is this: We are surely entitled here (and I cannot help thinking that my lord will agree in what I am going now to lay before you) to hear on behalf of the Crown, at all events, who, out of all the persons you have named, that you, the Crown, say did the illegal act which led to the

forfeiture of this vessel. Surely it is only fair that we should know who it is. Now I take them all. I take all the names which you have heard mentioned. I am sure you will agree with me that a more candid and straightforward way of dealing with a case cannot be imagined than that in which I am going to deal with it, because I am satisfied the more it is investigated the more utterly hopeless the case of the Crown will be felt to be. I will probe and search the case in respect to every one of the persons who have been mentioned, for the purpose of blowing the case of the Crown out of court. Now there are only three classes of persons who can by any possibility be suggested to have done any act which could lead to the forfeiture of the vessel in this case. Those three classes are these: The first is Mr. Miller, the builder. I will take his case separately from the others. The second class is that of my clients, Messrs. Fawcett, Preston and Company; and the third is a class of persons whom I will take together, because the Crown takes them together, Messrs. Fraser, Trenholm and Company, Captain Tessier, and Captain Bulloch, those who are said to be the agents or the financiers (I do not know what they are to be called) of the confederate government.

Now here a question arises which my lord was kind enough to suggest early in the case, because his lordship at once apprehended that it would become a point of great importance to be considered in the case. What is the position of Mr. Miller, and how far was it competent for Mr. Miller in this case to do any act or to make any statement which could in any way interfere with the ship or lead to the forfeiture of the ship? Who was Mr. Miller? Now on that part of the evidence which had been given very early in the case, I think it was an observation that fell from my lord that it must be assumed that Mr. Miller was building the ship as he was building other ships in the yard; he was a builder building ships by order. He was an agent for others to construct the ship according to the orders he had received. There was no kind of evidence which could lead you to imagine that he was building the ship on his own account, or as the person entitled to control the destination of the ship. But the case became clear as the case proceeded, because when the crimp came forward, on whose proceedings in other respects I shall have something to say to you presently, among the various species of gossip which he had to retail to us he said that he had heard on one occasion Captain Tessier say to Mr. Miller that he thought it would be an improvement if the hatches were raised two or three inches. Now what said Mr. Miller? "No, I am building the ship on contract, and according to my contract. I am not going to do anything of the kind." So that that at once became proved to demonstration which otherwise you would have assumed, namely, that Mr. Miller was a mere builder, building the ship, just as a coachmaker in Long Acre might have built a carriage for yourselves according to your contract.

Now you will remember what was the reply of Mr. Miller. With regard to the act of Parliament, the act of Parliament says, no doubt, "If any person within any part of the United Kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm" any ship or vessel with intent to cruise or commit hostilities, so and so shall happen; he shall be guilty of a misdemeanor, and there shall be forfeiture of the ship. But what does "any person" mean? (I speak subject to the correction of my lord.) It seems to me that is a matter that we can put beyond all possibility of doubt. Does it mean any person out of the street, for instance, in the first place? Does it mean, if there is a ship in the process of construction, if any trespasser comes in, or if any stranger comes in, or if any one who has nothing to do with the ship comes in by night, with the design of putting upon her some warlike equipment, with the design on his part that if he can accomplish it the ship shall be used for a particular purpose, is that within the meaning of the act, which says, "If any person within any part of the United Kingdom, or any part of his Majesty's dominions beyond the seas, shall, without leave and license of his Majesty for that purpose first had and obtained as aforesaid, furnish, equip, fit out, or arm, or endeavor to equip, furnish, fit out, and arm," any ship or vessel with intent to cruise or commit hostilities? Why, our own common sense recoils at the notion, and we at once say it is absurd; the act means nothing of the sort.

Now, gentlemen, if it does not mean that, what is the consequence? The consequence is this: the "any person" here spoken of must be a person who has got a right to control the destination of the ship; a person who has got a right to control the construction of the ship; a person who has got a right to say in what shape or build the ship shall be built, and for what she shall be used; and he is the person, and I say he is the only person, who can form in his mind any intention, within the meaning of the act of Parliament, that the ship shall be used or shall not be used in a particular manner. Now, was Mr. Miller capable of forming an intention, within the meaning of the act of Parliament, as to how the ship was to be used? What would you think if any one of you were to order a carriage to be made by your directions by a coachmaker in Long Acre, assuming that this could happen: that you heard he had been saying, "I am building that carriage, and that carriage is to be used for a particular purpose, and for an illegal purpose," and you were told that that carriage had been seized, your

carriage building for you, building according to your order, you having the control of it, you and you only having the right to say what the carriage should be used for; that that carriage and what it was to be used for was going to be judged, not by what you ordered, but what the coachmaker chose to say to some other person? The thing is too absurd, and one only wonders how the Crown could struggle, as they have struggled here, to bring in as evidence what Mr. Miller may or may not have chosen to say upon the matter.

Therefore we have, gentlemen, beyond all doubt, this: that, with regard to Mr. Miller, it is now proved to demonstration that he was simply the builder of the ship, building it on contract, and bound to obey orders; that he was a person incapable, within the meaning of the act, of forming any intent, and therefore we have not the question to try now what his intent was; we get rid of that intent. He could have had no intent. He could not control the destination of the ship, and therefore we need not trouble ourselves about trying that part of the question. You see what he says stands just on the same footing as if one of Mr. Miller's workmen had said anything; because if you are to try in the case of Mr. Miller, who has got to build the ship according to contract, and has only got to build the ship, and not to control it, what his private views, thoughts, and imaginings were upon the point, you might just as well try what the private views and thoughts and imaginings of one of his workmen were. What more has Mr. Miller to say to the matter than the private view of one of his own workmen who may have been engaged upon the ship, who may have planed the boards, or riveted the joints, or done some work to some part of the machinery? When we consider the act, we get a clear and certain view of what the act may mean. It is important to see what a man who had the control over the ship intended to do with her, but it is unimportant to see what a mere agent and builder, like Mr. Miller, intended to do with her. You will see how that completely annihilates the evidence of the crimp Da Costa. At the same time I cannot help pausing to remind you of the kind of evidence that Da Costa gave. He came forward, and what did he tell us he was? He said he was a shipping agent and a steamboat owner; that is his own account, in the first instance, of his character. I am sorry to destroy that illusion, but it turns out in cross-examination that he is a crimp and a partner in a tug. He says he is a shipping agent and a steamboat owner. How easily great titles may descend to something smaller. He is a crimp and a partner in a tug. He is brought forward by the Crown—I beg pardon, not by the Crown; he is one of the witnesses of Mr. Dudley, the Liverpool consul, and of Messrs. Duncan, Squarey and Company; he is in communication with them; it is to them that he reported the evidence he thought he could give, and they are the persons who sent him on to the very respectable and excellent gentleman whom we have the pleasure of seeing here, Mr. Hamel. He is not Mr. Hamel's witness, I beg to say on the part of Mr. Hamel; he is the witness of the American consul, Mr. Dudley, and of Messrs. Duncan, Squarey and Company. My learned friends for the Crown could not moderate him; he had one thing to say, and he was always saying it; and whatever he was asked, it always came out, "There is a gunboat." "There is a gunboat;" that is what he came to tell, and he would say nothing else—"the Phantom and the gunboat; all I know is, there was a gunboat." That is what he came here to say, and he brought it into every answer he gave; he would give no answer without mixing up with it that which he thought he was brought here to prove.

Now, gentlemen, one cannot forget that it was opened by my learned friend on behalf of the Crown himself that there were admissions made by Mr. Miller, not only to Da Costa, but to a person of the name of Acton; and you will remember that the first struggle we had about letting in what Mr. Miller said at all was with regard to a person of the name of Acton, and ultimately Acton was recalled to say whether Mr. Miller had not said to him something like what he said to Da Costa. You remember what Acton said, "Did Mr. Miller say to you, who were constantly in the yard, and listening to what was said and done, anything about the character and destination of this boat?" He said, "No, he did not; he always called it the boat; I never heard him call it anything else." Mr. Da Costa is the privileged man. How it happened I can hardly imagine; he is the privileged man, not connected with the yard, for he was not connected with the yard; he was there for no purpose on earth but to see that his little tug-boat was built in which he was a partner; and he is the person to whom it is supposed that Mr. Miller divulged this great state secret, if it were a matter of consequence whether Mr. Miller did or did not; the crimp is the person to whom Mr. Miller divulged the secret about the ship, with which he had nothing to do, and which he did not profess to be interfering with in any way. It is improbable enough, and it is not unworthy of your consideration whether Da Costa is worthy of credit or not. I put it upon this ground: it has been ruled—and I am very glad of the ruling, because we have got to the bottom of it—it has been ruled that Da Costa might tell us what Mr. Miller said to him; but I pray you to remember the clear, and accurate, and broad, and, if I may say so, distinct ground upon which my lord put the admission of Da Costa's evidence. It was this: My lord said, I do not mean that I am going to admit the evidence of Da Costa to be used against the three persons; but he said, The attor-

ney general alleges that one of the questions to be tried in this case is, whether there was on the part of Mr. Miller some act done, or some intent entertained, which insured to or led to the forfeiture of the vessel. Upon this point I do not exclude the evidence of what Mr. Miller said, but the moment we come to the question, which my lord distinctly said was to be afterward considered, and was one upon which he certainly had not at all made up his mind—but the moment we come to consider whether Mr. Miller could, whether he had the power by any expression, however strongly marked, to affect in any way the destinies of the ship or the right to the ship, the moment we come to consider that, we find that Mr. Miller, the builder, had no power of interference, and was not the person intended by the act. He having no power to use the ship in any way, any statement such as *Da Costa* represented him to have made would be utterly irrelevant and immaterial upon that point.

Now, gentlemen, I put aside, therefore, Mr. Miller, the first of the three classes of persons whose acts were, I said, to be considered as acts inuring or leading to the forfeiture of the ship. I now come to the second class, namely, my clients, Messrs. Fawcett, Preston and Company. What was the case opened by the attorney general? You remember what the attorney general said. He said: "I will show you that Messrs. Fawcett, Preston and Company were interfering about the building of the ship, that some of their partners were giving directions, and that they were making the machinery for the ship;" that is to say, machinery to work her as a screw propeller. "But," said the attorney general, "that is not all." And of course if that had been all, that would have been nothing. But he said, "I will go on to show you that at the very time that Messrs. Fawcett, Preston and Company were making guns for the ship, and that," said he, "of course stamps the character of the transaction, and shows that they were connected with the equipment of the ship for a warlike purpose."

Now, we have had the evidence on that point, and you know that the whole case as to the guns for the ship has been a miserable failure. You have had a witness who comes forward and says, Messrs. Fawcett, Preston and Company were making guns by the hundred, and boring them every day, and they were making gun-carriages at the same time; as the witnesses say that the machinery was being made for the *Alexandra*, machinery was also being made for the *Phantom*, and machinery was also being made for various other vessels at the same time; guns were being made; there was a large gun being made, and there were small guns being made, and there were gun-carriages. An attempt was made to identify these guns in any way with the *Alexandra*, but the attempt was a perfect failure. No person could suggest that there was any single particle of evidence which could identify the one with the other, except the evidence that, as they were making scores of other guns, so they were making three guns in particular at the same time. But it did not stop there, though it would have been bad enough, but I listened with some amazement when I heard the Crown go on to ask some witnesses what had become of the three guns, which I understood were to be made out to be the guns of the *Alexandra*. What is the last we have heard of those three guns? Why, that they went to the London and Northwestern railway. The *Alexandra* lying in the Toxteth dock at Liverpool, the three guns went to the London and Northwestern, directed to London to a gentleman named Captain Blakely, I think. What has that to do with the *Alexandra*? The Crown go out of their way to prove that the three pet guns upon which they have fixed their affections were carried from the only place where they could have been of the least importance as appurtenant to and to be brought on board of the *Alexandra*, and taken to London. That was the last sight we had of them. I do not know whether Captain Blakely has got them, or what has become of them. I must leave my learned friend, the attorney general, to describe that to you. Beyond that, is there a scrap or a particle of evidence on the point from any one of the discharged workmen, a spy or a crimp, or any one else, to show that Messrs. Fawcett, Preston and Company were interfering with the ship, except in the most legitimate manner, that they were preparing the ship for the screw propeller, and that they were doing the same for the *Phantom*, a perfectly harmless boat which was lying beside her; that they were employing their men to do that? Are Messrs. Fawcett, Preston and Company brought into connection in any way with anything concerning the Confederate States, except this, that Captain Tessier, who is said (whether that is true or not) to be an agent of the Confederate States, is employed in the building of the *Phantom*, and is, therefore, brought into connection with Messrs. Fawcett, Preston and Company, being himself at the yard, superintending the ship of which he takes possession, which he takes away, and with which he sails off in a perfectly harmless way out of the country?

Those gentlemen are the second of the three classes of persons who can by any possibility have had any interference in the direction of this vessel. Now I come to the third class, a larger class, and who are described as being the persons who are agents in this country of the confederate government—I mean Messrs. Fraser, Trenholm and Company, Captain Tessier, and Captain Bulloch, and I will add Mr. Hamilton, if you like, though I do not believe that his name is in the information. I will take them altogether, and consider what there is about them all. First, what we must see is

this—is there any pretence for saying that any one of those persons had, or ever assumed, any direction or control over the *Alexandra*? That is the question which you have to try, and upon that point I pledge myself to prove my case to you as clearly as a case was ever proved or disproved in this or any other court.

First, what was *Da Costa's* evidence upon this point? What was the amount of information he gave us? It comes to this, he said: the *Phantom* and the *Alexandra* were lying together in the dock; there were workmen working on both; the *Phantom* was being built for Captain Tessier, and through him for Messrs. Fraser, Trenholm and Company. I do not care about that. The *Phantom* is a vessel which nobody has thrown the least accusation against. There were workmen of Messrs. Fawcett, Preston and Company working there, and Mr. Welsman, a partner of Messrs. Fraser, Trenholm and Company, on one occasion he saw present in the yard, and he heard Mr. Welsman make this most remarkable statement—there was a workman at work, the two ships lying together, the two being put in operation at the same time—he heard Mr. Welsman tell a workman to “knock off;” that is the amount of evidence which he has to give to connect Mr. Welsman with the control and direction of the *Alexandra*.

Now I will give you, from their own mouths, the evidence of the five discharged workmen upon this point, and really the point which I want you to be good enough to consider is, what did those persons, who come forward here in the way in which we must suppose persons to come forward to do their best to make out a case, if they can make it out; what did they tell us with regard to anything on the part of Messrs. Fraser, Trenholm and Company, and Mr. Bulloch, or Mr. Hamilton, with respect to the destination of the *Alexandra*? The first who comes is Action; Action, you remember, is the person who stood at the gate of the building yard of Mr. Miller, who said he was in the habit, at meal times, of going round the ships and looking about them; he was not engaged himself in the construction of the ships, but he was a watchman at the gate; he was in the habit of going round and taking a look at the vessels. What did he tell us of the vessels, he being called to make out the case that Mr. Bulloch, or Captain Tessier, or Mr. Hamilton were interfering about the *Alexandra*? He said “I have seen Mr. Hamilton in Mr. Miller's yard while the *Alexandra* was being built, once or twice a week. He took a little notice of the *Alexandra*. Mr. Bulloch, I believe, came with him; they looked at her together more than once.” They looked at her. He was a watchman at the gate, and the utmost that he can tell us is, that these two men came into the yard, and were actually detected looking at the *Alexandra*! Gentlemen, it is a frightful state of things; they looked at her! They did nothing; they gave no orders that I am aware of.

LORD CHIEF BARON. It is more than that; they did nothing but look at her.

SIR HUGH CAIRNS. Exactly. He says, “They gave no orders that I am aware of. I have heard Mr. Hamilton speak to Mr. Miller once as to the *Alexandra*, and I heard Mr. Bulloch speak to Mr. Miller. I let them in through the yard gate.”

LORD CHIEF BARON. “I have heard Mr. Bulloch speak to Mr. Miller on the subject of the *Alexandra*.”

SIR HUGH CAIRNS. Yes, on the subject of the *Alexandra*. I assume that that would be what he meant, “I have heard Mr. Hamilton speak to Mr. Miller once on the subject of the *Alexandra*, and I have heard Mr. Bulloch speak to Mr. Miller also on the same subject. I let them in through the yard gate; they had no orders; they came in like other people; they had no particular order. I did not see Mr. Mann” (that is a partner in Messrs. Fawcett, Preston and Company's house) “go with Mr. Bulloch or with Mr. Hamilton.” Then, on cross-examination, he said, “I stood at the gate; I had nothing to do with the building.” Then, when he is asked as to Mr. Bulloch, he said, “I do not know that it was Mr. Bulloch at all.” He said, “I know Mr. Hamilton; I let him in. I cannot say if Mr. Bulloch was ever so called in my hearing. People sometimes gave their names at the gate; Mr. Bulloch never did.” The person he speaks of was a little man with dark whiskers and beard. He never heard any more; he never heard anybody attempt to identify him, to say that Mr. Bulloch was the person with dark whiskers and beard. It turns out that this man had taken into his head that a particular person was Mr. Bulloch, and that those two persons whom he mentions, Mr. Bulloch and Mr. Hamilton, were in the yard looking at the *Alexandra* together, and he heard them say something, he does not know what, once about the *Alexandra*.

Now, what is the other witness, the witness discharged for being drunk—Barnes? He is the engine-driver in the yard. He keeps up the fires and oils the machinery, and keeps the engine going, and so on, and he says he went round at dinner time, and was accustomed to go round at dinner time, and look at the ships. He was not working at the ships; he was in the engine-house. He says, “I recollect Captain Tessier coming while the vessel was being built: he was the captain of the *Phantom*, which was building at the same time; the *Phantom* was built at the same time. Captain Tessier used to go round her; he took less notice of the *Alexandra* than the *Phantom*; he looked chiefly at the *Phantom*; he walked about and looked at all the vessels that were building.” Then he says he knows Speers, the overlooker of Messrs. Fawcett, Preston and Company; he superintended the engineering both for the *Phantom* and the *Alexan-*

dra, and Messrs. Fawcett, Preston and Company's men were working upon the Phantom and the Alexandra." Then he says, "She is like a merchant vessel."

That is the whole of the evidence on the yard. So far as the yard goes, therefore, you will agree, I think, with me, that we may fairly put away Messrs. Fawcett, Preston and Company, Captain Tessier, and Mr. Bulloch, as persons who have exercised no control or shown any interest, except that of common lookers-on in the Alexandra.

The other three discharged witnesses are from Messrs. Fawcett, Preston and Company's works. What do they say? The first is Robinson the joiner. He says he was engaged in making gun-carriages, and then he spoke of the three mysterious guns which we have lost sight of, because they came to London. Then he says, "Carter was also employed. While I was there a man called Hamilton came"—what Hamilton we do not know, but a man called Hamilton—"at the time I was making the carriages; he merely looked at them." He says, "I know the Alexandra, and I did some work on the Alexandra. Therefore the whole of it is this, that while those three guns of which we know nothing were being made, a man called Hamilton came to Messrs. Fawcett, Preston and Company's works, and actually looked at the guns. Carter, the other workman, discharged at the same time, says he is a joiner, and was working also at the gun-carriages; he says they were making the machinery at Messrs. Fawcett, Preston and Company's for the Alexandra, No. 2209. He says, "I was sometimes in the erecting shop; I saw Mr. Hamilton there pretty often; I recollect the machinery for both vessels being erected; and Mr. Hamilton, if he is connected with the Confederate government, had of course every interest in looking after the machinery of the Phantom, which was being built for Captain Tessier; could not say that he took more interest in the machinery and the guns than in any other guns which were being built at the same time as the guns of the Alexandra were being made."

LORD CHIEF BARON. He says, "I cannot say that he paid attention to anything in particular."

SIR HUGH CAIRNS. Then he says, "I have seen Mr. Hamilton with Mr. Sillem, one of the partners. Mr. Sillem spoke of improvements in the compressor screws—that is, the compressor screws of the gun-carriages—to Mr. Hamilton. Mr. Hamilton said that he thought 'it was an improvement on the original kind of screw.'" That is the whole evidence of Carter, upon that point I mean. Now the fifth discharged workman and witness is Hodgson. Hodgson says that he was a man in the warehouse engaged about packing; he says with regard to the machinery of the 2209, Speers, the foreman of Messrs. Fawcett, Preston and Company, said to him, "take them"—this is when they were packed and ready to be taken away—"take them to Miller's yard or to the gunboat," as far as my memory serves. Therefore, if that were worth thinking about, he cannot tell exactly what he was told; he was told to take them either to the yard or to the gunboat, he cannot tell which. According to his memory he was told to take them to the one or the other. Then he says, "I know Mr. Hamilton. I saw him in the packing-room. I do not remember what he said. He examined the shot and shells. I do not remember what he said."

Now, gentlemen, not only was this the evidence which these discharged workmen gave, which failed miserably in proving anything for a moment against my clients, but I am sure you cannot have failed to observe how completely this evidence was a surprise to my learned friends who appear here for the Crown, because to these witnesses they put question after question, which showed that they expected totally different answers. I cannot help thinking that by some means or other the Crown had been totally misled with regard to the evidence which they expected in this case. To the last witness, Hodgson, they put this question with regard to the partners, "Did not they talk in a lower tone of voice when you approached?" "No," he said, honestly enough. Then, gentlemen, I think there has been some curious hallucination which has come over those who have got up this evidence, that those discharged workmen were coming forward to make out some case which, when they came and were asked upon their oath, they refused and denied to say one word about, and left the case exactly as I have described.

But it does not stop there. I have still to deal with the two illustrious witnesses who remain—the two spies. I will take first Mr. George Temple Chapman, whose history seems to be this. I cannot help thinking that there is a result of his evidence which is extremely important, though I do not think it is important for the case of the Crown. George Temple Chapman's story is this. He went to the counting-house of Messrs. Fraser, Trenholm and Company, on the 1st of April of this year. Will you allow me to remind you for a moment of the dates, because it becomes of importance? You recollect that the ship was seized on the 6th of April, that is, six days after George Temple Chapman went to Messrs. Fraser, Trenholm and Company's office; but you will remember also that the seizure was contemplated and was being prepared for before the 1st of April. I will tell you how that appears. You recollect a respectable man enough was called here, Mr. Neil Blake, a foreman, who was called to give some measurements in the ship, and he said, "I went to the ship on the 21st of March to look round her, and to get her measurements, and I was sent there by a captain of a United

States vessel, who asked me to go and look at her, and then I reported to the consul and to Messrs. Duncan, Squarey and Company." Now the fact was this. So early as the 21st of March, and from then to the 6th of April, the American consul and Messrs. Duncan, Squarey and Company were preparing for the seizure, which was made on the 6th of April. Then I pray your attention to this. George Temple Chapman goes to the office of Messrs. Fraser, Trenholm and Company, and has an interview with Mr. Prioleau. On the 1st of April, while the seizure is being prepared for, he goes to the office of Messrs. Fraser, Trenholm and Company, and leaves Mr. Prioleau under the impression that he is a compatriot of his, a secessionist, and a warm supporter of the Southern States. He goes on with that lie on his lips to have a conversation with Mr. Prioleau. Now what was the object of telling that lie? On the 1st of April Mr. George Temple Chapman was sent to the office of Messrs. Fraser, Trenholm and Company, to have an interview with Mr. Prioleau, and to beguile him by a false statement into making admissions to him. I suppose you will see that Mr. George Temple Chapman was sent by the American consul as a spy, in order to obtain from Mr. Prioleau some admission about the Alexandra. Well, what came of it? Mr. Prioleau did not at the moment suspect the imposture, and he seems to have communicated with him: Certain papers were referred to. He communicated about those papers with this Mr. George Temple Chapman, who was sent to spy out and to obtain admissions from Messrs. Fraser, Trenholm and Company. Does he say he was able to extract one single sentence from that firm, or to obtain from Mr. Prioleau, who was confiding in him, believing in him as a compatriot—does he say that he obtained one single piece of information with respect to the Alexandra, or with respect to any interest of theirs in her? Nothing of the kind. The whole thing is a failure which recoils on the Crown, but which is extremely important with respect to the case of the defendant, because trying their process, and trying it in the most legitimate way at the time the seizure is contemplated, the witness who comes forward and tells this story cannot put his finger on a single fact which could bear upon the case of the Alexandra.

Well, but, gentlemen of the jury, I now come to the greatest witness of all in this case, the witness who was reserved by the Crown to the last, and was brought forward certainly with some pomp and some ceremony. I mean Mr. Clarence R. Yonge. I am sorry I do not know his intermediate name.

LORD CHIEF BARON. Randolph.

SIR HUGH CAIRNS. I am obliged to your lordship. Mr. Clarence Randolph Yonge. How am I to describe this specimen of humanity, raised, as he said himself, in the State of Georgia; the man who began his career by abandoning his wife and child in his native country, who wormed himself into the confidence of Captain Bulloch, became his private secretary, had access to his papers, was his confidential agent, who was then accepted as the companion of those who were engaged in the confederate cause, persuaded them that he shared in the feeling of patriotism which actuated them, who came over to England, who still assumed the same character, was received by Messrs. Fraser, Trenholm and Company, became possessed of every secret with regard to the proceedings of those who were engaged in the war on the part of the Southern States, who accepted a commission from his native country in her service, became an officer enrolled in her navy, owing allegiance to her, received her pay, distributed her money, who then became a deserter, slipping overboard or leaving the ship of which he was an officer, in order that he might, by a lying pretence of a marriage, effect the ruin and plunder the property of a widow who had had the misfortune to entertain him in her country and to be possessed of some property of her own, who succeeded in possessing himself of that property, who brought her over to Liverpool, and who then turned her adrift penniless upon the streets, who then hurried up to London, in order to pour into the ear of Mr. Adams, the American minister, his tale of treachery, betraying every one of his familiar friends, and every one of his brother officers, and the cause of the country to which he had promised allegiance, who stood there in the box before you, who denied no crime, and blushed at no villainy, until, indeed, it was suggested that the victim of his bigamy had been a mulatto woman, and not his wife, and then all his feelings of self-respect recoiled, and he indignantly denied the charge. This, gentlemen, is the man who is brought forward at the end as the climax of the case on the part of the Crown; but I beg pardon, he is not the witness of the Crown, he is the witness of Mr. Adams, the United States minister. It is Mr. Adams, to whom Mr. Clarence Randolph Yonge told his tale. It is Mr. Adams who did not expel him from his home and drive from his presence this miscreant who polluted the air he breathed. It is Mr. Adams who forwards him to the Crown to be put into the witness-box before a jury of English gentlemen, to repeat the tale which that unmitigated villain told in our ears. Gentlemen, I know the honorable and straightforward character of my honorable and learned friend the attorney general, and I felt how he must have loathed and recoiled from his task when, reading from the brief of the American minister, he put question after question to this witness, question after question which elicited the tale which we heard from Mr. Clarence Randolph Yonge; but I pray you to observe at once the folly and the fatality of the course which has been taken in putting Mr. Clarence Randolph

Yonge into the witness box. And first observe the folly of the course taken. What was it that Mr. Clarence Randolph Yonge told us after all? He gave us a great deal of information about the Alabama; he told us who the officers were on board the Alabama; he told us how the money was procured to pay the officers on board the Alabama; he told us where the Alabama went to and where she did not go to, what she did and what she did not do on her cruises. But, gentlemen, are we trying the question of the cruises of the Alabama here? Is it material for you to know what was or what was not done on board the Alabama? What was it that all this evidence was intended to show? I cannot, for the life of me, conceive what object it was the Crown thought they would attain by putting this miscreant into the witness-box to tell us the narrative of the secrets which he had found out on board the Alabama. But, in the second place, I beg you to observe, not only the folly but also the fatality of the course taken by the Crown in putting this witness into the box, because I will venture to say that this evidence recoils on the case of the Crown, and actually puts an end to any shadow or fragment of a case which could have been alleged to be proved on the previous evidence. I do not merely mean to say that this evidence would cover with shame and confusion any case that was ever brought before a jury, though that is perfectly true. But consider this. We have now had here that which you never expected to hear, and that which my clients could never have been able to lay before you, because they have no spies and informers; we have obtained by this happy coincidence, for so I will call it, an insight into the interior of the whole of the secrets and proceedings of those who are said to have been the agents of the confederate government. We have got by the accident of this treachery, I say we have got laid before you by one who was the trusted and familiar friend and one of the agents, as it was said, of the confederate government, everything that they contemplated last April, at the time when they were engaged in fitting out and sending away the Alabama. Do you suppose it to be possible that those gentlemen could have had any project or any plan whatever about the Alexandria, which is the ship you are trying? Do you suppose they had anything on earth to do with her? Do you suppose that they had ever made any arrangement or plan for her construction? Do you suppose it possible that such a thing could have existed, and that Mr. Clarence Randolph Yonge, their trusted and familiar friend, would not have known of it, and would not have told of it? Why, gentlemen, the evidence of Mr. Yonge, fully, triumphantly, and perfectly acquits the Alexandria. It is utterly impossible that those gentlemen who were acting, as it is said, as the agents of the confederate government in Liverpool, I say that it is utterly impossible that they could have had any design on the Alexandria without Mr. Yonge being aware of it. Therefore I add that the folly and fatality of the Crown in bringing forward Mr. Yonge is perfectly manifest, and I cannot help rejoicing, though at the sacrifice of everything which revolts humanity, at having heard his evidence, because he came here to curse us and has altogether blessed us. He has disclosed the secrets of the cabinet council in Liverpool, and not one single secret of those cabinet councils has reference to the ship you are now trying.

Gentlemen, I have now done with the consideration of the evidence, and I say that, upon the two points of the case which I have laid before you, there is not a fragment of evidence of any act done by any of the persons who could do such an act which justifies these proceedings. I pray you to remember that it is for the Crown to prove and to establish the case. You will hear from the Crown (for the Crown in this case have the advantage of a reply)—you will hear from my learned friend the attorney general everything which ingenuity or eloquence can do to establish the case of the Crown. But I pray you to try the case of the Crown by the considerations which I have put before you, and I have no apprehension of the result. I have no doubt my learned friend the attorney general will suggest to you, as he did at the outset of this case, that it is much pleasanter to him not to prove the case, but to suggest the case, and leave the defendants to come forward and disprove the case alleged on the part of the Crown. Now I will repeat here what I said before. I do not stop to consider technically whether we could have called the persons who are charged with doing that which is criminal. Possibly we could not. But I do not stop to consider that. But as long as I hold a brief at this bar I shall maintain to the utmost of my power this doctrine, that though in civil cases it may be proper that a jury should hear the case told on evidence on both sides before coming to the conclusion—I say I shall maintain the doctrine, and I expect that my Lord Chief Baron will confirm it, that the duty of the Crown, when it rudely steps in and interrupts the course of business and seizes on property on the ground of a criminal charge—the duty of the Crown is to allege its case to the letter and prove it to the letter, and the privilege and protection of the subject is to stand upon his innocence, and charge and challenge the Crown to prove his guilt; and I charge and challenge my learned friend the attorney general, now in his reply, to stand up and say to you, “I appear for the Crown, and I will show by proof that a criminal act has been committed in this case, and I will show you that by evidence such as must be accepted in a criminal case.”

I ought to say, before I sit down, that, appearing here as counsel for the defend-

ants, I cannot but regret that these proceedings have been instituted. Wealthy as my clients may be, and engaged in extensive business as they are, it is not a matter of no importance to them to be challenged with the loss of a ship worth £10,000 or £12,000; it is not a matter of small importance for Liverpool merchants to be summoned up here to try a cause of the Crown upon a footing which no cause of a subject has ever been tried upon; namely, that in the event of success on the part of the defendants, being unable to recover from the Crown one shilling of costs, or one shilling of indemnity for the wrong which the defendants have sustained—it is no small hardship and one which no person would like to be subjected to. But if I were able to look beyond that, and to look at the case on public grounds, I could hardly regret that these proceedings have been instituted. I dare say the Crown had but little choice in the matter. I dare say the Crown thought that the best way was to let the American government see what would be thought by an English jury and court of justice; but I think, now that we have a trial under this act, there is reposed in your hands a duty and a power of far greater importance than the ship *Alexandra*, or a ship a hundred times her value. The matter, gentlemen, now rests with you. You have it in your power, if you please, to paralyze the interests of commerce and industry in our seaports. You have it in your power by fetters, by hampering and irritating fetters, to drive the trade of ship-building—the honest and straightforward trade of ship-building—from this country into a neighboring country which is quite capable to receive it, and which is quite willing to accept it. You have it in your power to rejoice the hearts and quicken the energies of the spies and informers who, I am sorry to say, infest our dockyards, and who, I am still more sorry to say, appear to throng the ante-chamber of the American minister. You have it in your power to do all this by bringing in a verdict for the Crown. But you have also in your power a greater and a better result than that. You have it in your power to show to the American government, and that with all courtesy, and all good feeling and good fellowship, that there is one thing which we are determined upon, that is to say, to have our laws applied, not upon suspicion or upon presumption, but upon legal and proper proof. You have it in your power to show that the neutrality which we have adopted in this unfortunate war has been adopted, not to hamper or destroy, but to foster our commerce. You have it in your power to show that just as we will not change our law, so also we will not stretch, or strain, or warp our laws to suit the temper of foreign ministers or the exigencies of a foreign state. You can do this, and I trust you will do it in this case by returning a verdict against the Crown and for the defendants.

MR. ATTORNEY GENERAL. May it please your lordship; gentlemen of the jury, my learned friend, Sir Hugh Cairns, whose very able services the defendants, (as I will call them for convenience,) Messrs. Fawcett, Preston and Company, have obtained on this occasion, in the address which you have listened to from him, has been very discursive and rather lengthy. I fear that in the discursiveness of my learned friend, to some extent, at least, it will be my duty to follow him, and for this reason many of the observations of my learned friend, to which I shall as briefly as I can in justice call your attention, and which I venture to class under this head of discursiveness, not bearing properly upon the case or upon the question which you have to try, are yet, as you would suppose from their proceeding from an advocate of the ability and experience of my learned friend, observations which, if not adverted to, and commented upon, would be calculated either to withdraw your minds entirely from the subject, or to perplex and bias your minds when you come to consider the questions at issue, and the manner in which they ought to be determined in that box.

My learned friend a short time ago told you, applying to me that which I do not deserve, that no doubt from the counsel for the Crown you would hear a display of much ingenuity and eloquence. Now, gentlemen, from my learned friend you have heard such a display, and of that we are all conscious, but the difference between the position of myself as counsel for the Crown and the position of my learned friend, Sir Hugh Cairns, as counsel for the defendants, is this, and I think you will be of opinion that it is a material distinction, that whereas his clients have relied upon the ingenuity and upon the eloquence of my learned friend alone, and have not allowed him to adduce before you a single tittle of evidence, I have no such necessity, if I could command it, for the use of ingenuity or the display of eloquence, because my case rests, not like that which is put forward before you as the defendants' case, upon observation and comment and declamation, but upon facts, the nature of which I explained to you at the outset, and which, when I come to that part of my observations, I shall submit to you, at all events under the circumstances, have been satisfactorily proved. But let me make this observation upon the general position of the defendants' case. You will recollect that at about the close of the first day of this inquiry, we proposed, on the part of the Crown, to get from a witness put in the box, Mr. Da Costa, whom my learned friend is content to call by no other epithet than that of "crimp"—I say we sought to obtain from him a statement of a conversation with regard to the *Alexandra* and its destination, and the contract under which it was built; we seeking to obtain that evidence, you will recollect that, although the answers of Mr. Miller were after-

ward treated by my learned friend as immaterial, and not entitled to any weight or consideration, still you will recollect that very arduous struggle which my learned friend, and those who were with him on the part of the defendants, made to shut out the evidence. When that evidence was tendered and the discussion took place, every one would suppose, from the manner in which the discussion was conducted, that the evidence, if obtained, would be considered not less important on the part of the defendants than on the part of the Crown; that it would not only be relevant, but material and cogent proof in the case. Well, a long argument took place, and the Lord Chief Baron took time to consider, and in the end admitted the proof. It must be taken, therefore, that that is evidence. It is evidence before you; it is evidence upon the notes of the Lord Chief Baron, just as much as any other particle of proof is evidence in this case; but you would have supposed, not only with respect to the other parts of the case, but certainly with respect to this, that if the defendants were desirous of placing before you the very truth and the very facts of the case, and if they were aware that the statement made by Da Costa was an unfounded statement, they would have put Mr. Miller forward to contradict it, and would have given other evidence. You would have supposed that they would not have left you with the evidence of the Crown on one side and the eloquent speech of my learned friend, Sir Hugh Cairns, upon the other. It is a very important consideration, and I make it thus at the outset of my reply, before I proceed to the details of the evidence. I say it is a very important consideration that, although I threw out in the beginning of my speech that we should make, at all events, a case calling for an answer, and though we have given evidence which (uncontradicted as it is) establishes a case on behalf of the Crown, and it being in the power of the defendants to call persons now confronting me in this court to contradict that case by showing what the very facts are, the defendants also knowing, as they must have done, that such observations as I am now addressing to you must of necessity be made, they permit their counsel to sit down without calling witnesses, and instruct my learned friend, Sir Hugh Cairns, who acts of course as counsel upon their instructions—they have instructed him to leave the case, as far as they are concerned, upon the proofs of the Crown, and upon the observations and comments which the ingenuity and eloquence of my learned friend have enabled him to make to you on this point, and on other matters not so directly connected with the case.

Now, my learned friend has said that this is a criminal proceeding. I shall show you that there is no foundation for that assertion, but, criminal proceeding or not, the proof of the existence of the facts and causes justifying the seizure and forfeiture of the property—I say the proof of those facts, of course, and without reference to the nature of the proceeding, rests upon the Crown, by whom those proceedings were taken. Well, then, my learned friend says, and says truly, "You are not to call upon us, upon the suggestion that we are guilty or have done certain things, to adduce any evidence before a jury to negative that suggestion." I quite agree in that. It would overturn the whole course of evidence, and would be contrary to reason and justice that a person who was merely and simply accused should be called upon to prove his innocence. But does the question so stand? After the evidence of the witnesses with respect to the construction of this vessel, and with respect to the destination of the vessel, and with respect to the character of the persons implicated and mixed up more or less in its construction—I say after that evidence, is it not idle to suggest that the defendants are now in a position in which, if they were to do what they could do without difficulty, namely, give evidence of the real nature of the transaction—I say, are the defendants now in a position in which, if they were to adopt that course, they would be, to use the language of my learned friend, going into the witness-box to exculpate themselves from a matter merely of accusation? I am sure you will see that that is not the case.

After these general observations I will proceed to deal with the observations of my learned friend which preceded his closer argument upon the evidence in the case, because I think the time which my learned friend occupied yesterday, and some portion of the time which he occupied this morning, was consumed in making observations such as I have already alluded to as being of a discursive character, but at the same time observations, many of them, on which it would not be right that I should not say a few words to you.

Now, in the first place, my learned friend, though he must I think have known better, would persist in describing the proceeding in this case—I mean the information—as an indictment, and he would persist in calling the acts imputed to his clients, or others, for his clients are not necessarily implicated—I say he would persist in calling those acts misdemeanors. Now, gentlemen, this is no indictment; you by this time know enough of the proceedings to be aware that it is not an indictment, it is an information. An indictment is an accusation against an individual attended on proof, with penal consequences to be visited upon the person of the individual, and not of necessity touching the property of any one. This proceeding is a proceeding, not against the person of any one, but against the hull of the ship *Alexandra*, as it now lies in Toxteth dock; and although the acts imputed in this information, and which must be proved to

your satisfaction in order to uphold the seizure and justify the forfeiture of the ship—I say, although these acts are acts or may be acts which might form, if the individual were sufficiently ascertained for the purpose of a criminal prosecution, a ground of such a prosecution, with that we have no concern—we have nothing to do with the question whether they might or might not form a ground of a criminal prosecution; they do form the ground of proceedings against the vessel such as the present proceeding, and in that light alone is it right that you should regard the subject. And my learned friend must permit me to remark that there is this very great difference to be observed. Those of us who have attended to proceedings in criminal courts are aware that it is a very frequent and common topic for counsel who defend persons accused of crimes to urge, “My unfortunate client’s mouth is closed, you can hear witnesses for the Crown, but, as far as he is himself concerned, you can hear nothing in reply.” But, gentlemen, who has closed the mouth of my learned friend’s clients on this occasion? I will not say he has done so, for I know that he has not; he has acted on his instructions; but the defendants themselves have thought fit, so to speak, to close their own mouths. They are therefore in a different position from the position in which any one would be placed who was at a criminal bar charged with committing a misdemeanor. They had it in their power to throw full light on that which may now, in your judgment, be more or less obscure. They have refused to do so, and they have voluntarily abstained from giving you further aid in your inquiry. Therefore I am entitled to make this observation, that my learned friend’s complaints on the evidence on the part of the Crown as being slender and unsatisfactory, are deprived of all their force and all their weight when you consider that that which, as it at present stands, may not appear to you to lead as conclusively as might be desired to the decision to which I invite you to arrive—I say, when you consider that that might have been cleared up, that that which attaches a suspicion, and which proves in some measure guilt on the part of the defendants, might have been explained or might have been contradicted—when you consider that the defendants would not adopt the course which was open to them—I think I may make this observation once for all, that the observations of my learned friend on what he has called the meagerness and weakness of the evidence for the Crown receive a complete and satisfactory answer. But I may make this observation further in justification of the course adopted by the Crown. The Crown have not thought it right in this case to indict any one of those persons. I have stated that the consequences of a conviction on indictment would penally affect the persons indicted, while the consequences of the success of these proceedings would be to affect the property in the ship, which would then stand forfeited to the Crown. It is, in fact, a more lenient course of proceeding, and it is a course of proceeding which is, perhaps, very advisable, when it is considered that this case is, as far as we know, the first case under the act of Parliament in which the question has been brought into a court and submitted to the consideration of a jury. Bearing that in mind, the course taken of proceeding by information rather than by indictment, is, I think, a wise and merciful course, because it is a means of giving to those who may possibly not have adverted to the matter, or may not have been informed upon it, information as to what the law is, and of showing, if your verdict shall be for the Crown, that it is not to be endured, for the sake of the interests of a few ship-builders at Liverpool, that the relations of two powerful governments are to be threatened and possibly disturbed. Such is the character of these proceedings, and such is the abundant vindication for this form of proceeding having been adopted.

My learned friend, rather to my surprise, considering his great ability as a lawyer, was a little severe upon what we are compelled to call an information, because by no other name is it known. It is a written statement of the charge on which the forfeiture has been based or is to be sustained. Now, my learned friend, for the sake of what appears to me to be not a very happy pun, told you that the information was misnamed, because it gave to him no information whatever. He would have you believe that so dark was he with respect to the accusation made against his clients, with others, that until he heard my opening and my statement in more popular language than the technical language of the information, he was at a loss to know what his clients had come to London to resist or to answer. But I think my learned friend in making that statement, can hardly have intended that you should receive it as a serious statement. The information consists of a great number of counts—that is to say, various forms of putting the charge. The reason for that would be very intelligible, I will not say to a barrister of seven years’ standing, but to a student of six months’ standing in the law. It is very difficult—although my learned friend does not usually allow us in this court the aid of his great forensic ability and legal attainments—it is very difficult to understand how, with that document, voluminous, I admit, before him, which his very able junior would have abstracted into intelligible and popular language in a quarter of an hour—I say it is very difficult to understand how my learned friend, with his general knowledge, and with the able assistance of the gentleman behind him, could feel any doubt as to what was the precise meaning of the information. I will, however, pass over that, and come to some more general observations which my learned friend made.

My learned friend said, truly enough, in observing upon what I opened to you, (namely, that this was the first case brought to trial, so far as we know,) that since the year 1819 there have been other wars. The object of those observations of my learned friend was to suggest that former governments, in the presence of other wars, had not embroiled themselves, as he would say, in any attempt to enforce the provisions of this, not very happily expressed, act of Parliament; whereas the present government, whom my learned friend did not speak of with any particular respect, being either more rash than their predecessors or perhaps influenced and pressed upon, (I do not know whether my learned friend would have gone so far as to say concussed by one of the belligerents,) whereas the present government, under the influence of one class of feelings and motives or another, have undertaken this task, which we do not disguise is, under the circumstances, a task not free from difficulties. But it is to be remarked that there are peculiarities in the pending war which sufficiently distinguish it, for the purpose of prudent proceedings under this act, from any former war since 1819. In the first place, one of the belligerents, the United States, is a great naval power. The other, as we know, the Confederate States, have no navy, properly so called, have no means of keeping the sea as belligerents. And there is this further peculiarity in the war; it is a war of revolt by one portion of a common state (which was for many years submitting to a common rule) against the other; and it so happens that all the members of all the various states composing that common state, who had any commercial affairs to manage and conduct, had, (that is, on both sides, on that side which is now called the North and on that side which is now called the South,) so long as peace continued, very extensive commercial dealings with the port of Liverpool, and with the merchants and others who carry on business there; and that was therefore likely to happen which has occurred, namely, that attempts should be made, more or less successfully, to repair from that port, or the adjacent waters, to repair and redress the disadvantage of the absence of a regular naval force on the part of the confederate government. Now, supposing such attempts to be made—and no doubt can exist that they have been made—then comes the observation that they would be likely to become known to the consul and to the other agents of the United States who are properly residing for commercial purposes in the port of Liverpool, and accredited to this country. It is not to be concealed, and I stated it in my opening, that the government of the United States has the strongest and the most direct interest in preventing the rendering of warlike assistance to those who are now their enemies from British quarters, or British arsenals, or British harbors. Well, then, what follows? The American government know very well that we have in Great Britain the act which has been so often referred to, namely, the foreign enlistment act; in fact we have borrowed it from them. They began their legislation in this beneficial direction as early as 1796, and they amended and extended it in 1818, while we followed their example in 1819. Now, recollect what would have been our position with reference to the United States if, instead of the United States being belligerent, we had been in that condition, in the condition, namely, of warring with another power with which the United States were at peace. We should then have had the advantage of the existence in the statute-book of the United States of the act of 1818, and we should have had a right, according to the comity of nations, if our minister at Washington or our consul at New York had been supplied with credible information that ships were being prepared with the direct and express intent and purpose, when complete, of passing under the flag of our enemy, say Russia, for the sake of example, and cruising against the merchant ships and ships of war of this country; I say, upon such information being laid before the consul, or being laid before the minister at Washington, he would have been perfectly justified in communicating it to the Executive of the United States. He would have been justified in doing that, and in asking the United States government, if they, or those who advised them, thought the case was well established and proved, to take proceedings upon it. And I say more; I say that, in such case, it would have been a gross dereliction of duty, either on the part of a consul or a plenipotentiary, if, with such means in his possession, he had not sought to avail himself of them in the way in which I have described. Well, but what should we have said if, under those circumstances, and such credible and well-supported information being furnished, the government of the United States had said, "It is true we have a foreign enlistment act; it is true that these statements appear to make out a case in which we might interfere effectually, but we do not think fit to do so. You have laid this information before us, but of our own mere motion we are not disposed to do anything?" And I ask you to suppose, further, that that had occurred, not once, but a dozen, or twenty, or a hundred times; and that then you found sailing out of the harbors of the United States Alabamas, or Alexandras, or Oretos, or whatever they might be, ships adapted for war and not adapted for commerce, adapted for an armament, not at the moment having an armament on board, but proceeding three or four miles from the shores of the United States, and then meeting other vessels or tenders, and taking from them their armaments, and at once hoisting a Russian flag and passing into the warlike service of the Russian government. That, gentlemen, is the case I ask you to suppose. Now, I am supposing

that all these facts are made known to the government of the United States, and that they are invited, for nothing more could occur than invitation, to act upon the subject. With respect to the idea of one government acting in pressure upon another, it may be very well for an eloquent advocate, like my learned friend Sir Hugh Cairns, to suggest or insinuate such a matter; but to those who have any knowledge of the relations and the manner of conducting relations between governments, it is perfectly well known, and does not admit of any doubt, that beyond a representation or request no foreign government dares to go in its communications with another in such cases. Well, I put that case, and I ask whether an interference of the British minister or the British consul such as I have mentioned would not only be warranted, but, with respect to their own country, would be a fair discharge of his duty? What is there in the present case that shows, or what foundation is there for imagining or suggesting to you, that anything beyond those limits has been done on the part of the American consul or the American minister? The American consul is stationed at Liverpool; he is on the spot; he is the person who, if he were not, (I have used the expression before, and I will repeat it,) I say, if he were not on the alert in the interest and for the sake of his own country with respect to matters of this kind, would not be doing his duty; he is in a position in which, if such proceedings were going on, they would be very likely to come to his knowledge; he is very likely to have the means of knowing the persons of those who may still rank as his own countrymen. The knowledge of the American consul is likely to be such as would give him facilities and advantages with respect to the knowledge of persons and the knowledge of the proceedings of persons visiting that port, members at the present moment of either the northern or the southern States. And when my learned friend suggested that the United States urged these proceedings, and put it to you as if I had made any such statement in my opening address, he made a mistake. I made no such statement. I said, and I said advisedly, because I thought it ought to be known, that the Crown has nothing to keep back or conceal; that the information which was deemed by those who advised the Crown important and sufficient for the purpose was furnished from the hands of the American consul at Liverpool, and was treated in the ordinary and proper manner—that is to say, it was laid before those who advised the Crown, upon the advice of whom the seizure was made; and there begins and there ends—I will not venture to call it the connection, for connection it is not—there begins, I say, and there ends, as far as the Crown is concerned, the action of the American government, either on the part of the consul or on the part of the minister in London. This information being supplied to the Crown, to suppose that in these proceedings the government have been influenced by the American government, or any officer of the American government, is as pure a piece of imagination as the imaginary report of which my learned friend has spoken, thinking, I suppose, at the moment, that he was jocose, and not meaning you to take it seriously. I say it is just as imaginary and just as much without foundation as the imaginary report which my learned friend asked you, I presume in jest, to suppose that an officer of the Crown might have presented to the government. My learned friend says, I can imagine this statement laid before the law officers of the Crown, and I can imagine their saying, Why, there is no case here; there is no substantial proof; you must fail if you go into court; but the American government are urgent, and they ask you to see what can be done; and therefore you may as well seize the ship and file an information, and see what comes of it. Gentlemen, my lord the chief baron has himself been a distinguished officer of the Crown, and I am quite sure I shall have his support when I say that, unless you are to treat this as meant in a purely jocular sense, my learned friend has imagined that which is not merely unlikely, but simply impossible; and he knows it; and I will to that only add, that if such a proceeding as between this government and its advisers were possible, and were to occur, it would be one which ought to consign to disgrace the law officers who so advised the Crown, and ought to banish from office with ignominy the minister who adopted or listened to such advice. I am afraid I may be giving too much importance to these observations, but it is impossible to tell beforehand what weight may be put on any observation made by so grave and learned a personage as my learned friend Sir Hugh Cairns. I therefore repeat, that if this was not intended as a jocular imagination, not perhaps very clearly developed, there is nothing in it to which you could be expected to pay any attention whatever.

I now come to a series of observations of my learned friend, a good many of which, I think the greater part of which, must have been intended, or should probably have been addressed to the learned judge. My learned friend urged a great many legal topics, no doubt, in the hearing of the chief baron, but also in your hearing, and apparently directed to you, which bore exclusively upon questions of construction of the statute and other matters of law; but as my learned friend took that course, I have no option but to follow him through his observations. I will, however, ask the attention of my lord the chief baron upon those points to which I shall have to advert, and which may rather be matters of law. With respect to the matters of fact I am sure I shall have your attention, gentlemen, and before I sit down I will endeavor separately and distinctly to lay before you the actual state and proofs of the facts disconnected

with matters of law; as to which last-mentioned matters you will take the direction of the chief baron, and with the discussion of which you will not therefore have to disturb your minds. My learned friend, among other matters of law, said, and it is not for me to controvert the proposition, that it was perfectly lawful for the subject of a neutral state to sell a ship, complete in her equipment, in all respects fit for warlike purposes, to a belligerent. Now, gentlemen, there would have been a great deal of force in that if my learned friend had been able to suggest (what, if it be the fact, he could easily prove) that this vessel, the *Alexandra*, was intended to be offered for sale as a contingency, which offer might or might not have been accepted by any belligerent, or any one of those two belligerents; but on the face of it the evidence, which was uncontradicted, shows that there was no such object or purpose as the construction of a vessel of war with a view to offering it for sale, or to obtain a purchaser from either of the belligerents. The intent would be there that the vessel should be equipped with intent to be offered for sale, and if a belligerent purchaser could be got, then to sell it to that belligerent purchaser; that would be the intent in the case supposed, whereas the intent alleged, and which must be proved to your satisfaction in this case, is an intent that the vessel when completed should not be sold, but should at once proceed to be employed in the service of one of those belligerents, I mean the Confederate States; therefore I at once dispose of the observation of my learned friend on the legality of a sale, by observing that we have no proof or even suggestion of an intention; and therefore, except for the purpose of leading your minds to conclusions foreign to the case, I do not really see—

LORD CHIEF BARON. Do you admit that a ship-builder could sell a vessel to either of the belligerent parties?

MR. ATTORNEY GENERAL. I say that there was no intention to sell.

LORD CHIEF BARON. But do you admit that it would be lawful for a ship-builder to build a ship for general purposes and then sell it to either of the belligerent parties?

MR. ATTORNEY GENERAL. If there were no intent in the course of equipping, or furnishing, or fitting out the ship; if there were no formed or decided intent that the vessel should enter into the service of either of the belligerents, without saying affirmatively that that might come under other considerations, I say the case would not be that which is contemplated under this statute.

LORD CHIEF BARON. I am asking with a view to obtain some information as to what your opinion of the law is. I ask you whether, in your opinion, it is lawful for a ship-builder to build a vessel which may have a warlike aspect, a vessel capable of being turned into a warlike vessel, whether it is lawful for a ship-builder to build such a vessel, with a view to offer it for sale indifferently to one or other of the belligerent parties?

MR. ATTORNEY GENERAL. I would rather confine my answer to this, that I do contend that any intent by a builder of a vessel other than that which we charge here, namely, the intent that it should enter into the service of a foreign power at war with another and at peace with the British government—I say I do not allege that any intent short of that would create an offense under this act.

LORD CHIEF BARON. I have of course no power to enforce an answer to the question I have put to you if you decline to give it.

MR. ATTORNEY GENERAL. My object in not wishing to bind myself to any conclusive answer is this, that as it appears to me, the facts and circumstances of the present case give no rise at all—

LORD CHIEF BARON. I am not quite sure of the facts because you did not give me an answer; if you give an answer, I should put another question, and then you might perhaps see that it was perhaps very germane to the inquiry. I have no hesitation in saying that, according to all the authorities and all the decisions that we can get at, a ship-builder has as much right to build a ship and to sell it as a maker of gun-powder has a right to sell it to any belligerent parties, or the maker of any sort of cannon or muskets, or pistols, or anything else. It is laid down in Kent's Commentaries on American Law that it is the right of neutral subjects to supply both belligerents with war, arms, gunpowder, and all munitions of war; to which I add, why not ships?

MR. ATTORNEY GENERAL. I do not controvert the proposition, nor do I controvert the doctrine laid down in the two cases of the *Independencia* and the ship *Alfred*, which is the case in *1st Curtis* which was cited this morning. And the note is, that it is not a violation of the neutrality laws of the United States to sell to a foreigner a vessel built in this country which may be completely equipped for war, but which is frequently used for merchant purposes. The *Independencia* is a fuller case. That was a case in which a ship was fully equipped and ready for immediate warlike purposes, but there was no formed intent that she should enter into the service of any belligerent power, the intent being that she should take her chance of finding a customer in some belligerent or other.

LORD CHIEF BARON. Apparently, then, you concur in what I state?

MR. ATTORNEY GENERAL. I do not deny those authorities, but I distinguish them very much indeed from this case. I say that they have no bearing on the present

case. The present case I put forward, as it was put forward at the onset, as being a case in which a particular intent is discovered to have existed, and I prove—

LORD CHIEF BARON. The act does not say that it is unlawful to build a vessel with that intent.

MR. ATTORNEY GENERAL. I shall come to my learned friend's observations on these various points in their order. I have taken a careful note of the argument of my learned friend, and I will not pass over any material part of it, and that is one of the subjects to which I shall have to advert.

The next contention of my learned friend was this, that to bring the case within the statute the vessel described in the seventh section must be a fully armed vessel issuing out of a port. Now I cannot, of course, agree to that argument, or adopt that view of the section of the statute, because it is upon the surface of the statement in the first sentence which I addressed to the jury that this was not an armed vessel. The whole history of the matter is now before the jury. Of course, there was never any idea of suggesting that the vessel was armed. I will come hereafter to the arms that were probably intended to be put on board her by-and-by, but at the time of the seizure the vessel was in the state which I described, built for warlike purposes, and for those only, but not having received any armament on board. Now, addressing myself to this point, I have no doubt your lordship has observed that those various words (and they are numerous) which are used in the statute, such as "equipped," "furnished," "fitted out," "armed," and so on, are used not conjunctively, but alternately.

LORD CHIEF BARON. They are used conjunctively in the preamble and disjunctively in the enacting clauses.

THE ATTORNEY GENERAL. Yes, my lord; and I shall show your lordship good authority that the true construction, as I understand it, whatever may be the language of the preamble, is disjunctive. It is used disjunctively.

LORD CHIEF BARON POLLOCK. Certainly my present impression is that they all mean precisely the same thing, "that it is not lawful to equip, furnish, or to fit out or to arm" for a particular purpose with a particular intent, and that there is no distinction for this purpose. That to equip a ship of war you must furnish it with arms. Furnishing it, imports arming in the French language; using that very expression, "to arm." I apprehend that all these words mean substantially the same thing, whether you call it "equip," or "furnish," or "fitting out," or "arming," is commonly applied thus, it is said that a vessel is fitted out in such a basin—meaning it is fitted out for useful purposes.

THE ATTORNEY GENERAL. My lord, there are other material words to which I will call your lordship's attention. It is not only a violation of this section that a person shall equip, or fit out, or arm, or furnish, but if he shall attempt or endeavor to do so, or shall procure the thing to be done, or shall knowingly assist or be concerned in aiding with the intent. Therefore any one of those, or the endeavor, or being concerned in the attempt to do any one of those, as I submit to your lordship clearly on the terms of this section, would bring the case within its operation. That would be a matter for your lordship's direction to the jury.

But if one might, in addressing the jury, advert to the consequence of such a construction being adopted, it would be very easy to show that if it were to be adopted on authority the foreign enlistment act would be a dead letter, and might as well be thrown into the fire or repealed, indeed, rather than be kept in the statute book inoperative as it would then be, because we do not need to draw, as my learned friend did in some cases, upon a vivid imagination. We have, as a matter of evidence before us in the case, the history of the Alabama, and that is a very instructive comment on the results of such a construction as my learned friend contended for in this respect of the foreign enlistment act. He says that to constitute a violation of this section the vessel must be armed. Now, then, what would be the consequence? I quite agree that whatever the offense, it must be committed within the dominions of her Majesty in order to be cognizant by English tribunals. What would be the consequence of this construction? We do not need to draw on imagination, because we have the example of the Alabama staring us in the face. My learned friend stands on the word "armed." As long, therefore, as you stop short of arming, according to this argument, the executive cannot interfere. The vessel cannot be seized. The carrying out of an obvious intention of hostility toward a friendly state cannot be prevented. Now, then, take the case of the Alabama. We are not told precisely, nor is it material, in what particular state of preparation that vessel was when she left her moorings at Birkenhead, opposite to Liverpool, but we know that she was not armed. We know, in point of fact, that she obtained her armament at Terceira, but Terceira is, for the purposes of the present observation, merely a place out of the Queen's dominions. She would have obtained her armament equally well out of the Queen's dominions if there had been a tender lying with that armament in the Irish channel, four miles say from the nearest point of the English coast, and of course an equal or greater distance from the Irish coast. Now suppose that to have occurred, the British government to be

informed on credible and incontestible evidence—I have a right to take it so far that the Alabama, or No. 290, as she was called, has been built for the express purpose, and is being completed with the direct intent that she shall, as soon as safely she can out of reach of British law, take on board her armament, and then immediately assume the character and proceed on the operations of a ship of war—I put it to you some time ago, supposing that to be done once, and supposing the knowledge of all that to be brought to the officers of the British government, and then supposing the same thing to happen the next day or the next week, a similar ship, a similar destination, a similar preparation, and a tender or other vessel lying outside in like manner to furnish and complete the armament; and if you suppose that such instances recurring—and if the law would be as my learned friend contends in one instance, it would be so in one thousand, or five thousand, or ten thousand—supposing those cases to be recurring from time to time, and the officers of the British government to be distinctly informed of them, and to be affected with distinct and clear notice, and yet no proceeding taken to prevent the departure of any one of those vessels from the British port—I ask you whether the provisions of this section would not be rendered entirely inoperative by reason of the easy and obvious means of evading the law almost under view of the officers and ministers of that law? I then appeal to the language of the statute. That is an observation to my lord. I find that “arming” is used as an alternative expression, and I find that it is used equally as an alternative expression, both where it is spoken of as directing an arming and where it is spoken of as endeavoring or being concerned in the arming or in the equipment of the vessel.

LORD CHIEF BARON POLLOCK. I have got the word “equip” in Webster’s Dictionary: “Equip, to furnish with arms, or a complete suit of arms for military service.” Thus we say, to equip men or troops for war, to equip a body of infantry or cavalry. But the word seems to include not only arms, but clothing, baggage, utensils, tents, and so on. Then, again, the third meaning is, “To furnish with men, artillery, and munitions of war, as a ship.” Hence, in common language, “to fit for sea, to furnish with whatever is necessary for a voyage.”

THE ATTORNEY GENERAL. My lord, I must still address your lordship on the argument of my learned friend, to which I have now arrived, on the construction which is to be put on this seventh section. My learned friend, as I understood him, contended that that raised an argument on the use of the words “or with intent to cruise or commit hostility,” occurring rather low down in the section; and he contended that those words were to be disjoined from the previous expression, as to being employed in the service of a foreign power. Now, my lord, the words of this section, passing over the difference between “equipping” and “endeavoring and being concerned,” and so on, point to the equipment or fitting out, in the first place; and it then describes, “with intent or in order that such ship or vessel be in the service (I may take it short) of a foreign state as a transport or storeship.” Now, my learned friend contended that with the expression “storeship” the connection of the ship being employed in the service of a foreign state ended, and that those words, therefore, could only apply to the case of a storeship, and would not apply to the other case mentioned, of the intent of the use of the vessel, being that it should cruise or commit hostilities.

LORD CHIEF BARON POLLOCK. In that I own I do not agree. I think that those four words were not meant three of them to be applied to the transport, and the fourth to the vessel of war. I think they were all meant to apply to the same matters.

THE ATTORNEY GENERAL. I was only going to make this observation, which would seem to my mind to be conclusive on the correctness of this view. If my learned friend’s argument in this respect were well founded, then this would follow, that you would violate the act if you fitted out, to be employed in the service of a foreign state, a transport or storeship, without reference to the existence of a state of war. Therefore, a merchant or a ship-builder at Liverpool or at Plymouth, building a storeship, say, for the Portuguese or the Spanish government—governments which have no war with any other state—according to my learned friend, would violate the earlier provisions of the section. And there is this further remark, that when he comes to “intent to cruise or commit hostility,” disjoining that from “being employed in the service of a foreign government,” he would make it descriptive of that to punish or to repress which no act of Parliament would be required, for it would be flat and simple piracy, to be visited with the consequences of that crime on any British subject, which I think my learned friend described as “cruising on his own account.” It would come to this, that you could not, without violating an act of Parliament, build a storeship for a foreign government at peace with all the world; nor would you violate this section if, in cruising and committing hostilities, you did so in the service of a belligerent state. It appears to me, upon those two grounds, that that part of the argument of my learned friend so completely fails, that I will not, especially after the intimation of your lordship’s opinion, occupy more time upon it.

Then I think my learned friend referred to the eighth section, which prohibits the adding to the number of guns of vessels which are already in the service of a belligerent state. It is, that any person who, either within the seas or in any part of her

Majesty's dominions beyond the seas, without leave or license, shall, by adding to the number of guns of the vessel, or by changing those on board for other guns, or by the addition of any equipment of war, (here is the offense,) "increase or augment the warlike force of the ship, shall be visited with the consequences of a violation of the act." Therefore, we have, in the section immediately following, a section which is properly to be considered a prohibition of increasing the warlike force of a vessel already furnished and cruising as a vessel of war. Whereas, according to my learned friend's construction, you might add in effect to the navy of either belligerent vessels of war, with the guns and munitions complete, provided only you either do not put on board a complete armament before the vessel leaves the ports of Great Britain, or provided you (as my learned friend calls it) cruise on your own account as a pirate and do not take service under any lawful flag. My learned friend (as your lordship and the jury will recollect) entered into a good deal of comment as to what had happened with reference to the discussion *pro* and *con* on the foreign enlistment act, and he sought (I suppose such must have been the intention of my learned friend) in some way to influence your lordship's decision on the meaning of the act of Parliament as it stands, by reference to discussions and observations of very eminent statesmen, my learned friend at the same time discreetly availing himself of the opinions of certain of those eminent men only; for my learned friend knows well that there was considerable diversity of opinion expressed on the subject. Now, my lord, the debates, as your lordship is well aware, which took place previous to the passing of this act were frequent. Men of the greatest parliamentary eloquence and genius took part in them on the one side and the other, and very opposite opinions were expressed, as happens when you have a debate—the opposition taking one view and the government another—very opposite opinions were put forward in the statements and in the speeches of very eminent authorities. When I tell you that the debaters on the introduction of this bill included Mr. Canning, Sir James Mackintosh, Sir William Scott, afterward Lord Stowell, Mr. Scarlett, Mr. Denman, and eminent members of the legislature of that class, I need not apprise you that if any of you, after this inquiry has come to an end, feel disposed to sit down and obtain the volume of Hansard for the year 1819, and to occupy a leisure hour or two in reading a very excellent report of very eloquent speeches in Parliament, you have the means of so entertaining and instructing yourselves; but I cannot perceive the bearing of those discussions or of the observations of those statesmen on the question which we have now to discuss. I think the case of necessity occupies and will occupy quite enough of your time and of the time of my lord to render it the duty of counsel not to engage your attention and to occupy your time in matters which are not strictly relevant; and I will therefore pass away without any more immediate or detailed comment on the observations of my learned friend by repeating the remark, that there are observations on the other side which might be cited and might be laid before you. But I think that form of answering what my learned friend has said would be unfair to you and an unfair use of the public time.

There was a subject to which my learned friend referred upon which I will simply say a word. He alluded to, and he went at some length into, the history of what is called generally the Terceira expedition. I did not myself perceive quite the bearing, even allowing the general latitude which my learned friend took of that expedition, or of the circumstances connected with it at all events, on the defendants' case. I believe the fact to be, as a matter of history, that that expedition was highly disapproved of by the government of this country, who showed their disapprobation in a very strong and not warrantable manner, according to the law of nations, for the ships of that expedition were seized in the waters of a neutral and friendly power, and therefore, so far as the views and action of the government of that day itself were concerned, they did not view that expedition in a favorable light, but rather seem to have dealt with it with a high hand—I admit as a violation of international law. Mr. Huskisson's remarks I will not further advert to; they come within the observations made as to the speeches of writers and eminent statesmen on the one side and the other. Mr. Huskisson, at the time when he made the observation to which my learned friend has referred, was the leader of the opposition in the House; and it may be pretty certain, if we could have access to the observations of the leader for the government, that we should find very opposite and very conflicting views on the matter put forward.

But now I come to the authorities which my learned friend cited, and which I mentioned just now to my lord—I mean the cases of the *Independencia* and the *Alfred*. Upon those I have to make this observation, and this only. They were founded on the American statute, but I am not aware that there is any difference material to the present consideration between the language of the statute of that country and the language of our own foreign enlistment act.

LORD CHIEF BARON. It is given by Lord Chancellor Kent in his commentaries; I think they are as nearly as possible the same.

MR. ATTORNEY GENERAL. I think they have not got the word "or," but I have got the word "and."

LORD CHIEF BARON. We lawyers sometimes read the word "or" for "and," and "and" for "or."

MR. ATTORNEY GENERAL. Yes, my lord, no doubt in the stress of argument we do very great violence to words, but in ordinary cases, as your lordship is well aware, we, at least those who rule us, and lay down the law with authority, prescribe to us—

LORD CHIEF BARON. Considering that those four words are used, as I think they are, in the same sense, all of them, it must be a matter of perfect indifference whether you say "or" or "and," because if you do the one you do all, and whether it is used disjunctively or copulatively is immaterial.

MR. ATTORNEY GENERAL. If the word "and" were used, and we were permitted to read it as "or," it would perfectly square with the observation which I am addressing your lordship. I am relieved from any difficulty of that kind, because I find the word "or" to be the word actually employed, and I resort to the general rule of construction that you are to give to the words in the act of Parliament, as to the words in any other legal instrument submitted for legal construction, their ordinary grammatical meaning, unless there be something in the context which assigns such meaning which would bring a result unjust or absurd.

My lord, I find no difficulty in dealing with this word "or" in its ordinary sense, and I find very great convenience, as I think I shall show your lordship, in adopting that ordinary view of its signification. My lord, on this point, and also on another point that was raised, namely, the absence of the completion of the vessel, that is to say, that the vessel was only in progress, and was not a completed vessel—on that, and also on the construction of the words "fit or arm, or assisting or being concerned in," and so on, I should wish to refer your lordship to a case in the Supreme Court of the United States—the United States against Quincy.

LORD CHIEF BARON. What is the book of the report?

MR. ATTORNEY GENERAL. I shall principally read from the tenth volume of Curtis's Reports of the decisions of the Supreme Court. It begins at page 189.

SIR HUGH CAIRNS. We have got a report; I have it reported in 6th* Peters.

MR. ATTORNEY GENERAL. It is the same case. This is a sort of digest or collection of decisions, but it is a work with the authority of one of the assistant judges of the court, and is a work of great authority.

LORD CHIEF BARON. What is the name of the case?

MR. ATTORNEY GENERAL. The United States against Quincy. My lord, as this is the only authority which I think I shall have to trouble your lordship with, at all events in any detail, and as it really is a case throwing very considerable light upon any matters which are important in the present case, I will take the liberty of reading the judgment, which, I am happy to say, is not one of very great length.

LORD CHIEF BARON. I think in that judgment there are four findings of law by the court, and then, afterward, four others.

SIR HUGH CAIRNS. Four directions.

LORD CHIEF BARON. Four directions of law.

MR. ATTORNEY GENERAL. As my learned friend has mentioned, the same case is reported at great length (for it contains the arguments of counsel) in the report mentioned, I mean 6th Peters, and I may find it convenient, as part of my observations to your lordship, to adopt a portion of the argument of one of the counsel, whose arguments are reported in Peters but do not appear in the book from which I am about to read the judgment, I mean the 10th volume of Curtis. My lord, the note of that case is this: "Under the third section of the act of April, 1818," (that is the American foreign enlistment act, which I mentioned,) "it is not necessary that the vessel should be armed or in a condition to commit hostility on leaving the United States."

LORD CHIEF BARON. The words of the act are "fitting or arming." I understand in the American act they are "and arming."

MR. ATTORNEY GENERAL. It is "and."

LORD CHIEF BARON. The words in the American act are the same as ours.

MR. ATTORNEY GENERAL. The word "and" occurs in one part of the section, and the word "or" in another.

LORD CHIEF BARON. I suppose they draw the acts of Parliament in America very much as we do in England?

MR. ATTORNEY GENERAL. When your lordship hears this judgment, it may appear that this difference was on purpose, and not inadvertently or accidental. It is section thirteen. I have the section of the statute before me, which is dated April the 20th, 1818. It is entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned."

The third section of the American act provides, "That if any person shall, within the limits of the United States, fit out or arm, and attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, and arming." Therefore, when we come to the "knowingly be concerned," we have

the "and" changed to "or," "of any ship or vessel with intent that the said ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, subjects, or people, to cruise or commit hostilities against the district, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid; every person so offending shall be deemed guilty of a misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof shall be forfeited, one-half to the use of the informer, and the other half to the use of the United States."

Now, with that section in mind, let us see what the judgment of the court was in the case of Quincy's.* The note says: "Under the third section of the act, it is not necessary that the vessel should be armed or in a condition to commit hostilities on leaving the United States, in order to convict one indicted for being concerned in fitting out a vessel with intent that she should be so employed." I do not know whether your lordship has a copy of the American act or not?

LORD CHIEF BARON POLLOCK. No, I have not.

THE ATTORNEY GENERAL. Would your lordship allow me to hand it up? (The act of Congress was handed to his lordship.)† Your lordship will find that in that section, as far as regards equipping, or attempting or endeavoring to equip, or procuring to equip, the words are in the conjunctive; but when you come to that which follows, namely, "the being concerned in fitting out," there the word is "or." And this decision, therefore, is upon that portion of the American statute, which, in its language, precisely agrees with the general language of our act of Parliament, the American act of Parliament making a difference as to the conjunctive or disjunctive in one particular only, our act of Parliament adopting and observing that distinction throughout. But, as your lordship will now understand, this case is an authority upon the whole of our section, (because it proceeds upon that part of the American section which agrees with the whole of ours,) that it is not necessary that the vessels should be armed or in a condition to commit hostilities on leaving the United States, in order to convict one indicted for being concerned in fitting out a vessel "with intent that she may be employed as aforesaid," when "every person so offending shall be deemed guilty."

The court adjourned for a short time.

Gentlemen, I am sorry to interpose this legal argument in the course of my address, but it is difficult to avoid doing so after the course taken by my learned friend Sir Hugh Cairns. I was proceeding to read this judgment in the case of The United States vs. Quincy. It is delivered by Judge Thompson, and he states: "The indictment upon which the defendant was put upon his trial contains a number of counts to which the testimony did not apply, and which are not drawn in question. The twelfth and thirteenth are the only points to which the evidence applied, and the offense charged in each of these is substantially the same, to wit: that the said John D. Quincy, on the 31st day of December, 1828, at the district of Maryland, &c., with force and arms, was knowingly concerned in the fitting out of a certain vessel called the Bolivar, otherwise called Las Damas Argentinas, with intent that such vessel should be employed in the service of a foreign people—that is to say, in the services of the United Provinces of Rio de la Plata—to commit hostilities against the subjects of a foreign prince—that is to say, against the subjects of his Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided." Therefore it would appear to be really an indictment. I do not know that it would be material. An information is a public proceeding, and I apprehend that the rules of evidence would be the same. The act in question, in the sixth volume of the Laws of the United States, declares that, "if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming." And I may mention here to you, that in the present information the charge is made in the various ways, namely, "equipping or fitting out, or attempting or endeavoring, or being engaged in:" that may be taken, "to bring him within the words of the act;" it is not necessary to charge him with being knowingly concerned in fitting out and arming. The words are fitting out or arming; either will constitute the offense—that is, when you adopt the words "being concerned," then it is "being concerned in fitting out or arming." He is only charged with being knowingly concerned in the furnishing, fitting out, or arming. "This case came on to be heard on the transcript of the record from the circuit court of the United States for the district of Maryland, and on the points and questions in which the judges of the said circuit court were opposed in

* Vide 6 Peters, pp. 445-469. Ed. 1833. The United States v. John D. Quincy.

† Vide United States foreign enlistment act, (act of Congress, c. 88. April 30, 1818,) post.

opinion, and which were certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel; in consideration whereof it is the opinion of this court, 1. That it is not necessary that the jury should believe or find that the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment; therefore, the first instruction applied for on the part of the defendant must be denied, and that on the part of the United States given. 2. That the second and third instructions asked for on the part of the defendant should also be given." That is the fourth instruction—that is, as to the Rio de la Plata, whether it was to be considered a state. In the original report in Peters, the arguments of counsel are given, as well as a full statement of the facts.

LORD CHIEF BARON POLLOCK. Is that in Peters's Report or in Curtis?

THE ATTORNEY GENERAL. I was about to cite a passage from the argument of counsel to use it as my own, which is in page 451. I understand your lordship has the case in 6th Peters.

LORD CHIEF BARON POLLOCK. I have it before me now—Mr. Williams in reply.

THE ATTORNEY GENERAL. Yes, my lord, "commented for the United States in support of their first prayer, that the guilty intention having been proved to have existed in the mind of the traverser in the United States, and the guilty enterprise having actually commenced there, the traverser is guilty of a violation of the third section of the act of the 20th of April, 1818, although the equipments were not completed in the United States, and although the cruise was not commenced, nor the Bolivar prepared to commence her cruise, until after her arrival in St. Thomas."

LORD CHIEF BARON POLLOCK. Where is that?

THE ATTORNEY GENERAL. I am reading from the arguments of Mr. Williams, the counsel, at page 451. The section in question punishes "the fitting out and arming, the attempting to fit out and arm, the procuring to be fitted out and armed;" and with the view to comprehend all who shall have any participation in disturbing the neutral relations of the United States, it punishes those "who shall be knowingly concerned in the furnishing, fitting out, or arming any ship or vessel with intent," &c. Then, in the next sentence but one, he argues, "If it be necessary for the completion of the offense that the vessel should not only be fitted out but also armed, it is manifest that this important act of Congress, required by the laws of nations, and essential to preserve the peace of this country with foreign nations, will become a dead letter; for it is not only easy to evade its provisions, but at least equally convenient to do so, by having some additional equipments, however inconsiderable, to be effected abroad. This position admits that the attempt to fit out and arm, however small the progress therein, is an offense, while the complete fitting out, having a commission on board, with the most flagrant intention to privateer, is no infringement of the act. The slightest augmentation to an armed vessel is undeniably an offense under the fifth section, as it is under the eighth section. The policy and scope of this old law, so far from restraining the express terms used in this section, afford the strongest aid towards a literal construction of those terms. The twelfth and thirteenth count of this indictment, and the first prayer, are drawn in the very words of the third section of the act in question; and if these counts and this prayer are not sustained, it must be on the ground that the act ought to be interpreted differently from its obvious and literal meaning. The reason for a strained interpretation, which will have the effect of defeating and repealing this wholesome statute, will scarcely prevail with this court, and the authorities will be found to overthrow such an interpretation and to support that which is insisted on by the prosecution. The exact and faithful discharge of the duties which a neutral position imposes upon governments is among the highest and most important of all national duties. Honor and interest concur in making it especially binding on our own government." I will apply these terms to the British government, and while this conduct has in a very great degree promoted the prosperity of this country, it has placed the policy and character of the nation in a high and elevated position in the estimation of other powers. Then there are authorities cited. In the third circuit and Pennsylvania district a decision was made upon the words on which this indictment was drawn, and it was there decided, in the case of *The United States vs. Gurnet*, 2 Dall. 321, that the converting a ship from her original destination with intent to commit hostilities, or, in other words, converting a merchant ship into a vessel of war, must be decreed an original outfit, for the act would otherwise become nugatory and inoperative. It is the conversion from her peaceable use to the warlike purpose that constitutes the offense. Then it appears that the vessel to which that case referred never actually proceeded on a cruise, and yet Gurnet was convicted. Whereas he argues, "in the case at bar, the Bolivar having actually performed her cruise, and made captures of vessels and property of nations with whom the United States were at peace, no room is left for doubting the object of her outfit in the port of Baltimore." But of course it was necessary that the act should be completed within the territories of the United States, and it was therefore held that under that portion of the statute in which the word "or," and not

the word "and," is used, and in that respect exactly the same as the general structure of our seventh section upon the charge of being concerned—which is one of the charges in this information—in the fitting out, such charge is established by showing the intent, and a partial construction only, and not a complete construction or arming of the vessel. That applies to one of the objections taken by my learned friend Sir Hugh Cairns in this case, that the vessel is not a complete vessel, and to his argument that, in order that it should be brought within any one of the limbs of this section, it ought to be a completed vessel. To which, as I understand his argument, there should be superadded some equipment or fitting or arming which, he contended besides, was indispensable to make the offense in any sense a complete offense.

Gentlemen, I think I have now come to the last of the legal discussions invited and raised by my learned friend; and upon this authority I would submit to you that the authority also agrees with the reasonable construction. Two points are established: first, that arming is not necessary in order to constitute one of the violations of the statute, namely, the being concerned in, or probably endeavoring, but at all events being concerned in, the equipping, furnishing, or fitting out; and the next, that it is not in any view of the section necessary that the vessel with reference to which the forfeiture is sought to be affirmed should at the time of seizure be a completed vessel, and have then superadded some armament or fitting of war.

Gentlemen, I am happy now to state that what I shall have further to add will be mainly, if not exclusively, upon matters within your province, and which you will have to decide under the ruling of my lord the chief baron, namely, upon matters of fact.

My learned friend said, and I do not at all demur to that way of looking at the case, that there would be two questions for your consideration. The first is, Was the ship equipped? and if so, Was the vessel fitted out for a warlike or for a mercantile purpose? That is the first question. My learned friend himself, in dealing with the question, commented on the evidence of three witnesses, Captain Inglefield, Mr. Green, and Mr. Black, called on behalf of the Crown to show what was the structure, the strength, and the adaptation—I do not say the adaptability, but the adaptation—of the vessel as far as the building had gone. Now I submit to you that this part of the case, as the evidence stands, is conclusively proved. The evidence of Captain Inglefield alone would have sufficed to make out that part of the case, and I should not have dreamt of attempting even to fortify that evidence by any other witness, except that in the conduct of cases of this description one cannot clearly anticipate on what points, even on points which may appear to one side or the other to be extremely clear and incontrovertible—one can never with certainty conclude that on a point opposing evidence will not be adduced. As, however, no opposing evidence has been produced, and as Mr. Green and Mr. Black support by their evidence distinctly the evidence of Captain Inglefield, I am content to leave this part of the case on the evidence of that gentleman.

Gentlemen, my learned friend has been very eloquent with respect to some of the other witnesses called on the part of the Crown, and has applied very harsh terms of vituperation. He could not of course adopt such a course with reference to a gentleman like Captain Inglefield, whom we shall both regard as an intelligent, competent, and honorable witness upon the matter on which he came to speak. Now, then, what did he say? Because, without treating it as a matter of science, or as the opinion of an expert, I would very shortly recall your recollection to the facts connected with the vessel, which were spoken to by Captain Inglefield. He told you her burden, which would be small for a man-of-war, but of course quite sufficient for a war vessel of the smaller class; he told you she was built of teak, and she was very strongly built, and he showed that by reference to the thickness and strength of the various parts of the vessel. He told you that her bulwarks were strong and low; he told you that she was not fitted for a commercial ship, and I am glad to have some admission from my learned friend, or from his clients through him, for my learned friend agrees that she was not adapted for commercial purposes. She wanted of course that which is essential to a mercantile ship, a hold in which to carry goods. She had what may be called a hold, if you please; that is to say, she had space in her lower part for the carriage of stores, but not for the carriage of merchandise; that my learned friend admits, but he laid hold of an expression which Captain Inglefield used. Captain Inglefield being the witness of truth, would not of course give you a partial account, but if he comes before you to state anything he would state the whole truth, and he stated that this vessel was altogether unfit, which leads you to the inference that she never was intended, for mercantile purposes; she was fit for a war ship or a yacht.

LORD CHIEF BARON POLLOCK. His experience is, this might be used as a yacht, and easily convertible into a vessel of war.

THE ATTORNEY GENERAL. Yes, my lord; that is to say, by armament and additions.

LORD CHIEF BARON POLLOCK. No more than that; there were no guns or preparations for guns; she is without any of those appurtenances which indicate an intention of guns being put on board.

THE ATTORNEY GENERAL. Your lordship is aware that she was not fit for any actual use at sea, either as a vessel of war or as a mercantile vessel, at that time. I think she had had a propeller attached; her masts were in; they had begun her rigging, but she was evidently in an incomplete state; therefore, when Captain Inglefield speaks of her capability or adaptation, he means this, and such is the fact, that supposing the persons who had built that ship up to that moment had intended from the beginning that she should be made a man-of-war, as far as the construction of the vessel had gone they would have done precisely what they have done. So if they had intended her for a yacht, that which was done would have been done, and the reason of that is obvious. The great distinction between a war ship and a mercantile ship is, that the one is adapted to carry men and arms and military and naval stores, and the other is adapted to carry ordinary merchandise as cargo. But there is this in common between a yacht and a man-of-war, that a yacht is no more designed or adapted to the carriage of cargo or merchandise than is a ship of war. It is common to a yacht and to a ship of war, that the arrangement of stowage should be adapted to the carriage of men and to the carriage of provisions and munitions which they may desire to use; but the *Alexandra* was not adapted and fitted, and could not be adapted to mercantile uses, because you cannot change such a material condition in a ship and in her construction as in the room provided for stowage. If you build your vessel with stowage only sufficient for the carriage of such commodities or materials as might be carried on a ship of war or a yacht, you cannot, without making the ship over again, give her a capacity for carrying a mercantile cargo. Then it is not suggested—the ingenuity of my learned friend did not suggest to him, nor, apparently, have the instructions of his clients suggested to him—that there ever had been in contemplation a yacht from the beginning to the end of the construction, so far as it had gone, of the *Alexandra*. I think, therefore, we may put “yacht” out of consideration. Then, if we may put “yacht” out of consideration, we have the possibility of a peaceful destination absolutely negatived, and we have nothing left but the destination, as far as that is to be conjectured from the structure, character, and strength of the vessel; we have no destination left but a warlike destination. Therefore, I start with that part of the case. Then I say, with respect to the witnesses, Mr. Green and Mr. Black, my learned friend made no very pertinent observations. He said Mr. Green had not made a ship for many years, and was of opinion, as many persons at his time of life are, that modern inventions were not of any great value; he was one of the old school, to whom I do not know that my learned friend should particularly object; all that he objected to was that he was a tory in ship-building. There is no doubt that he was a very competent witness, and, as regards practical workmanship, probably his skill and experience are equal to those of Captain Inglefield, he taking a larger view of the matter.

I therefore, without saying more on that subject as to the evidence, submit to you with every confidence in the world, that that part of the case, at all events, has been made out. My learned friend alluded, speaking of the adaptability of a ship, to an occurrence which took place some years ago, which we all recollect, and which led to an ingenious ship-builder, Mr. Laird, proposing to arm all the tug-boats in the Mersey. Let me make this remark on a tug-boat: a tug-boat is no more intended to carry cargo than a ship of war or a yacht. In the proposal of Mr. Laird, who is a sanguine person, he proposed only to convert for future use in warlike operations, tug-boats, which, as far as the main conditions of difference between merchant ships and ships of war are concerned, would belong by their construction to the war vessels, and not to the mercantile marine.

Gentlemen, that brings us to the great question in the case with which my learned friend next dealt on the evidence. I mean the question of intent, because I have stated and admitted throughout that unless you are satisfied upon the evidence produced on the part of the Crown that there did exist the intent—and I will very much adopt the view put forward by my learned friend as to the kind of person, with reference to the ship, by whom such intent must be entertained to fulfill the description of the intent; I shall come to that in a moment—but unless I satisfy you that the intent that the vessel should be employed by the Confederate States is made out, and an intent existing before the seizure and during the construction of the vessel, I have stated throughout, and I repeat, that the information fails.

Now, then, gentlemen, let us see what the evidence is as regards the intent. My learned friend, in speaking of the intent, could not, of course, avoid some allusion to that remarkable piece of evidence to which I called your attention in the earliest part of my observations. My learned friend could not fail to allude to the statement of Mr. Da Costa as to what Mr. Miller said, and by way of derogating from the effect or weight of that evidence, my learned friend addressed to you arguments and observations which I think were addressed to the learned judge in the argument in favor of the exclusion of that statement of Da Costa, and which, at all events, if they were not so addressed, ought to have been and they more properly belonged—indeed they exclusively belonged to the consideration of whether that evidence ought to be received; but they do not in any degree affect the weight and the operation of the evidence when it is lawfully

before you. Now, he has spoken disparagingly of Mr. Miller, who, I should think, was an excellent acquaintance and friend of my learned friend's clients, Messrs. Fawcett, Preston and Company. The elder Mr. Miller, I am informed, and I suppose that will not be controverted, is a respectable gentleman, in a considerable way of business. He sat facing me. I do not know whether he is in court now. It is immaterial, but he certainly sat facing me during a considerable portion of yesterday.

LORD CHIEF BARON. Do you personally know him, Mr. Attorney General? because that is a very unusual statement to make to a jury, unless you are giving evidence.

THE ATTORNEY GENERAL. I am not giving evidence, my lord.

SIR HUGH CAIRNS. It is a piece of evidence which is quite new to me.

THE ATTORNEY GENERAL. It certainly was stated to me. I thought it would be a notorious matter. However, it will be taken that I should not state it, because I am not desirous of going into the box to be cross-examined by my learned friend. I ask you, therefore, gentlemen, to dismiss that entirely from your minds. But, however, that is immaterial.

LORD CHIEF BARRON. You may take it for granted that he was either here or within call.

THE ATTORNEY GENERAL. I think it would be quite enough for me to say that Mr. Miller is alive and well and able to travel. He is in a condition, therefore, to be affected by what we call a subpoena, and he either was here or was not. Now, after the evidence which Da Costa had given, it might be suggested that they could not tell that Da Costa would be examined. Da Costa was examined early in the course of yesterday. There are abundant means of communicating with Liverpool by telegraph. Mr. Miller might have been telegraphed to to come off by the mail train last night, and might have been examined this morning; therefore, if Mr. Miller has not been brought up after the parties concerned were aware of the evidence given by Da Costa, the conclusion is they really do not disbelieve Da Costa, and they have not thought it worth their while to ask Mr. Miller whether he can contradict him. If, as the probability is, as the Lord Chief Baron has stated, Mr. Miller, as being a person very much concerned in these matters, was within hail, then it is to be fairly inferred that those who act for the defendants in this case have communicated with Mr. Miller, and that Mr. Miller has not been put forward, simply for this excellent reason, that if he had been put forward he would not have contradicted the evidence of Da Costa; not contradicting it, he would confirm it, and we should probably have obtained evidence from the other side in support of the information.

Now, gentlemen, what was the statement of Mr. Miller? because it is a very important statement, and I ask you throughout your consideration of the evidence for the Crown to bear it in mind, as direct and important evidence upon a matter like intent, which is seldom capable of conclusive proof, intent being, strictly speaking, that which is in the mind of a person. On the subject of intent Mr. Miller was plain and outspoken. Well, but Mr. Miller was not reticent in these matters. He met his friend, the crimp, and he unbosomed himself to him. I shall have to comment on the observations of my learned friend as to the character and position of my witnesses. I do not think there is anything discreditable in the character or position of Da Costa when he knows what the questions raised by the Crown with regard to the Alexandra were. I say there was nothing discreditable or to the disgrace of Mr. Da Costa that he should make that communication to those who would be able to avail themselves of it in a proper way and at a proper time; at all events, he has done so, and he is now to be taken as a witness of truth. What does he say? He says that the elder Mr. Miller told him that the vessel was intended for a gun-boat. Now, apart from any evidence of this kind, I think you must have long ceased to entertain any doubt upon that matter. Gun-boat is a name for the kind of vessel of war to which I suppose, from her size, she would be particularly adapted, and therefore this does not rest at all exclusively on the statement of Mr. Miller. And then he added, We—I must take it, and I do adopt it, that the younger Mr. Miller is no partner of his father's, but I think it is very likely they may be spoken of by strangers and by the world as Miller and Son; at all events the expression is in the plural—We and Fawcett, Preston and Company have jointly undertaken to build her for Frazer, Trenholm and Company for the confederates. Then, I think, he went on to say that Mr. Miller added (what we certainly have proved without Mr. Miller) that Messrs. Frazier, Trenholm and Company are agents for the confederate government. Now, gentlemen, this is very material evidence, and permit me to repeat, that if, bearing in mind the evidence for the Crown, apart from and independent of this, as also the nature of the matter to be proved, intent, you find such evidence even pointing probably to the conclusion which this evidence shows, then I ask you to add to all the other proofs this statement of Mr. Miller; and I further ask you, can you reasonably doubt that the purpose and intent was that the vessel should be completed as a vessel of war, and should then pass into the service and the employment of the government of the Confederate States? That, at all events, is the statement of Mr. Miller of the purpose for which he made it. Permit me to repeat, for it is very important, you cannot doubt for one moment that Da Costa has not invented

this; and, moreover, that Da Costa has given a correct version of the words used by Mr. Miller is really incontrovertible, and it appears to me to throw very great light on the whole of this case, and entirely to deprive the arguments of my learned friend of any weight to the effect that we were calling on his clients to go into the box and exculpate themselves; whereas we have made, as the evidence stands, a strong case.

I do not say the absence of intent in the nature of things would not be consistent with every statement short of the statement of Mr. Miller; but then if you have a case in any form of proceeding, either a penal proceeding with respect to property like this, or a proceeding at a criminal bar, in which the evidence without more would lead to the conclusion that the allegation was sustained, and especially if it be in the power of the person charged to vary the case, it is undoubtedly his business to avail himself of his opportunity, and not to leave the matter in any kind of obscurity or doubt. So much for Mr. Miller. My learned friend said Mr. Miller was the builder, but he seems to have been in very friendly and intimate connection with Messrs. Fawcett, Preston and Company, as well as with persons who appear to have been mixed up in this common interest.

Then my learned friend said there was no secrecy in the building of this ship. I do not suppose there was; it was built in an open builders' yard; and with reference to the machinery, it was constructed on the premises of Messrs. Fawcett, Preston and Company. I do not suggest that the operation was not carried on in the usual way; and probably it did not occur to this gentleman that there was any necessity for concealment; but although that might be of weight if the case was left, as my learned friend has supposed, in the weak and meager way in which my learned friend has presented it to you, I think when we take into consideration the evidence which we have laid before you, there can be no doubt that the observation loses its weight.

Then my learned friend came to the matter of the guns. You would understand from the question put to the witness from the workshop of Messrs. Fawcett and Company that it was supposed at least that some connection would be traced between the Alexandra and certain guns. Now I am bound to admit that, strictly speaking, we failed in tracing that connection. But there is an observation which I think I am entitled to make on that, and which impairs very much the force of my learned friend's observations as to the failure of the case on the part of the Crown as compared with the way in which it was expected to stand in that respect. Not only have the defendants done that which of course I admit they were perfectly entitled to do; not only have they not thought fit to give any evidence on the subject on which Mr. Miller spoke so distinctly, but they did another thing, which is a matter in the conduct of a defense which a jury witnesses and to which they are entitled to attach some weight. And how stands the case with reference to the guns? It appeared from the statement of the witness, a witness of course called from the premises of Messrs. Fawcett, Preston and Company, a witness of the name of Hodgson, that there were guns. I have no right to say now that those guns were intended for the Alexandra; but he described three guns as being at the premises of Messrs. Fawcett, Preston and Company, a large gun and two smaller guns. I have mistaken the witness—I was upon the evidence really of Joseph Carter. Joseph Carter was a carpenter—he would therefore have no business, properly speaking, with guns, rifled or unrifled—I mean with the guns themselves; but you cannot use the gun without a gun-carriage, and it was the duty of Carter, as a carpenter, to make the gun-carriages for the guns constructed at the workshops of Messrs. Fawcett, Preston and Company, and he tells you that he was at work at certain guns at the same time at which the arrangement and construction of the machinery for the Alexandra was going on. This no doubt was left open, because he spoke of the machinery he saw in progress in the yard or the workshop of Messrs. Fawcett, Preston and Company. He was employed in the construction of the gun-carriages, and it appeared that the Alexandra (I suppose it is found convenient, I make no imputation on that, probably it is found convenient in such a case to use a number instead of a name) was called No. 2209.

SIR HUGH CAIRNS. That was the machine that was called 2209, not the Alexandra.

THE ATTORNEY GENERAL. So was the ship. "Messrs. Fawcett and Company were making machinery for a propeller boat named 2209."

SIR HUGH CAIRNS. I am sorry you have taken a wrong note.

THE ATTORNEY GENERAL. There is the note of my learned friend, Mr. Jones, which is to the same effect as mine.

LORD CHIEF BARON. He says, "I never heard the vessel called other than 2209."

THE ATTORNEY GENERAL. He says it was 2209.

LORD CHIEF BARON. He says, "I did not go on board the Alexandra; it was called with us 2209."

SIR HUGH CAIRNS. That is the machinery.

THE ATTORNEY GENERAL. The number was attached to the ship, but in applying the same number to the guns—

LORD CHIEF BARON. "A gun-carriage numbered 2209." Each gun-carriage had a separate number. The number on the carriage was the same as the number on the guns.

THE ATTORNEY GENERAL. Here is the literal quotation from the short-hand writer's notes.

LORD CHIEF BARON. "They were separate jobs, and not one job." And then he says, "I could not say that they were for the same vessel."

THE ATTORNEY GENERAL. Distinctly upon the short-hand writer's note the witness stated, which agrees with our note, that the vessel was called 2209.

LORD CHIEF BARON. I have read my note to that effect.

THE ATTORNEY GENERAL. Of course, my lord, that is conclusive.

LORD CHIEF BARON. "I know I never heard the vessel called other than the 2209." I do not want the short-hand writer's note for that.

THE ATTORNEY GENERAL. I know one of the witnesses states that he used to take various things by direction to 2209, and that those things he left on the *Alexandra*, so that it is clear and beyond doubt, and my lord's note is conclusive upon it. It is in your recollection also, no doubt, that the *Alexandra* was known in the machine shop of Messrs. Fawcett, Preston and Company by the number 2209. Now, these three guns were also being constructed, or the gun-carriages, and it would be important, if it could be done, to show that the same number was used with reference to the gun-carriages. I asked the question, and the witness was not able to say, one way or the other, what number it was. He said that two of the three guns had certain numbers, as he thought, but he did not appear to have any distinct recollection, one way or other, what was the number on the larger gun. But he said this, he said it is the course of business in the workshop of Messrs. Fawcett, Preston and Company that drawings are given out to the workmen who have to construct gun-carriages, and on the face of those drawings is written the number which is attached to the gun-carriage. Now, gentlemen, a number being attached to the vessel, of course it is probable—I do not say how the fact might turn out to be—that the same or corresponding number might be attached to the gun-carriage. In order, therefore, to see how it was, we asked the question; we could not be exactly informed, because the witness, as a matter of memory, told us he could not recollect.

LORD CHIEF BARON POLLOCK. He says there was no number on the large gun.

THE ATTORNEY GENERAL. The witness, as my lord says, did state the numbers as he thought he recollected them, 2004 and 2005 on the small guns.

LORD CHIEF BARON POLLOCK. And none on the large one.

THE ATTORNEY GENERAL. Quite so, my lord. Then, desiring to obtain information on that, he was asked whether numbers were put on the drawings of the gun-carriages. He said "yes," and of course added that the drawings in this case, after he had completed his work, were left, so that they would be properly and naturally in the hands of Messrs. Fawcett, Preston and Company. I called for the production of the drawings. The defendants did that which, I repeat, they were perfectly entitled to do. They are here, and they are entitled upon the act of Parliament to put the Crown to strict proof of everything which it is incumbent on the Crown to produce.

SIR HUGH CAIRNS. We did not refuse to produce them. We said we had no notice; we referred to the notice to produce. The notice to produce was the drawings for the gun-carriages for the *Alexandra*. I said there was none.

LORD CHIEF BARON POLLOCK. There was no notice for the drawings of No. 2209.

SIR HUGH CAIRNS. No, my lord.

THE ATTORNEY GENERAL. I asked for it.

LORD CHIEF BARON POLLOCK. My note is this: "Drawings called for, not produced; notice admitted. We produce the drawings of the *Alexandra*."

MR. MELLISH. My learned friend called for the drawings of the *Alexandra*.

THE ATTORNEY GENERAL. I did not. I called for the drawings of the gun-carriage.

LORD CHIEF BARON POLLOCK. If you meant 2209, there was no notice to produce that.

THE ATTORNEY GENERAL. Surely there must be some terms in the notice which was given.

SIR HUGH CAIRNS. This is it, "All drawings," &c. (The learned counsel read the notice to produce.)

THE ATTORNEY GENERAL. "Of, for, and in relation to." I should have thought that if there was an honest intention to assist in the administration of justice —

LORD CHIEF BARON POLLOCK. That is not the question; the question is whether you have given the notice or not.

THE ATTORNEY GENERAL. However, it appears we asked for this. I was not in court when this particular point was raised about the notice to produce. I was examining the witness. He said he left the drawings with Messrs. Fawcett, Preston and Company, and the answer at the moment —

LORD CHIEF BARON POLLOCK. You examined Carter.

SIR HUGH CAIRNS. I said we produce no drawings; you have given no notice to produce.

THE ATTORNEY GENERAL. I must take it that we have not put ourselves in the position to insist on the production of this, and indeed if we had done so they still might

have withheld it; and inasmuch as the witness had no recollection on the subject, we could not give any secondary evidence, as it is called. You have it that no strict proper notice was given, and under the circumstances the drawings were not produced.

Then my learned friend seemed to think that there was something extraordinary in the account given that these guns were sent up to London, and he could not imagine how, consistently with that, it could be imagined that those guns were intended for the *Alexandra*. He says, you have got a ship at Liverpool, and you ask the jury to suppose that guns which are sent to London were meant for that ship. No one imagines that it was intended, whatever the intent was, to put on board the *Alexandra* at any time in the port of Liverpool a complete warlike armament; that is impossible; we have no proof that such a thing was intended, and we have no evidence that in the case of the *Alabama* that course was adopted. Suppose an evasion of a statute to be contemplated, and suppose it to be intended that the vessel should be completely fitted to receive an armament, and to be converted into a vessel capable of carrying on actual hostilities; suppose the intention to be to evade the statute, what would be more likely or more natural than that the vessel would leave her port of build without arms or armament, but adapted for the reception of an armament, and should in some part of the globe or other, more or less distant, receive on board that armament? I am only saying that this fact is perfectly consistent with the fact of the intent being entertained which I have so often described to you; the sending of the guns to London might be for the purpose of those guns being put on board the *Alexandra* at some place to which the guns would be supplied from London. Of course I have not given evidence on that point, and I do not say how the fact is, but I only make these observations in answer to the comment of my learned friend on that part of the evidence, which amounted to this, that so far from proving or establishing the case of the Crown, this, like many other parts of the case which my learned friend described in the same way, went rather to negative the charge, and to discharge those who are charged with having harbored the intent to which I refer.

Gentlemen, we now come to an important matter, and that is the matter of the interference on the part of certain individuals, whose connection with the confederate government, I think you will be satisfied, is established with this vessel in the course of her construction. Here, again, I must repeat that I rely very much in confirmation of every piece of evidence which was given on the statement of Mr. Miller; I rely very much on his uncontradicted statement; but the evidence, as it stands, is not unworthy of your consideration. The first witnesses spoke to what went on at the yard of Messrs. Miller and Sons; they speak, and I am in your recollection whether those witnesses, against whom I think the hardest thing which my learned friend could say was this, that they are discharged servants; probably if they had been servants still in the employ of Mr. Miller, they would have had greater reluctance to give evidence in this case, which cannot be one very tasteful to Mr. Miller, than they have now that they are relieved from that position; but so far from being apparently, and, as far as we could judge, eager or willing witnesses for the Crown, I ask you whether their demeanor did not rather suggest that what evidence they gave they gave rather with reluctance than with eagerness or very willingly, and whether there is any reason in their demeanor and in the nature of their statements to doubt that what they stated was literally the truth, and according to the fact? Now, then, what they do is this: we have had an account of who certain persons were, and whatever may have been said about Mr. Yonge, I think you can have no doubt is strictly true. We have an account of who Captain Tessier was, and who Mr. Hamilton was. Captain Tessier had acted as a commander, and not a very long time ago, at least, was an officer in the navy of the Confederate States, because he had taken the command of the vessel called the *Bahama*, the history of which was important in this way, that the *Bahama* took out certain stores and guns for the *Alabama*, which is undoubtedly a man-of-war of the Confederate States now, and she was under the command of Captain Tessier, Captain Tessier at the same time apparently being in some relations with Messrs. Fraser, Trenholm and Company. Whether he is a clerk or servant of theirs I am not exactly aware, but he is a person mixed up with what I will continue to call the confederate agency as it existed at Liverpool. Now, Captain Tessier was frequently there, and the evidence to show that the witness was not a partial witness, or disposed to strain the truth, is this, the witness says there was going on at the same time as the construction of the *Alexandra* was proceeding the construction of another vessel, which I understood to be called a steel vessel—I suppose plated with steel—called the *Phantom*; and he tells you fairly enough Captain Tessier was frequently there. He observed both vessels, both the *Alexandra* and the *Phantom*, but more particularly the *Phantom*. Now, that is not the statement, at all events, of a witness who comes to give a partial statement, with a view to favor one side in a litigation. It is the evidence of a man who, at all events, must be supposed to intend to speak the truth. At the same time he does bring Captain Tessier very frequently to the yard, and not confining his attention to the *Phantom*, though it would appear he paid more particular attention to that ship. Well, but we have Mr. Hamilton and Captain Bulloch brought to the scene with more or less

frequency. The expression which I think the witness used was "frequently," and I will ask now, as I asked in my opening, why, in the name of fortune, were these gentlemen busying themselves about the Alexandria? They were men of occupation and of business. They were not idlers and loungers about the builders' yards to see on what lines vessels were constructed, or to inform themselves about naval architecture. They were men who did not go to the yard of Mr. Miller, or to any other place in Liverpool, without an object and a practical definite purpose; and having the evidence of Acton as to Mr. Hamilton's frequent presence, as to Captain Bulloch being at the yard, and Captain Bulloch's career and history, you know very well that has been established in a manner by documents which cannot admit of a doubt; those are acts of intermeddling, or interference, or whatever they may be called, which took place at the building yard. But then you find these gentlemen, or some of them, not only at the building yard, but transferring their attention to the scene of the other operations in the construction of the vessel, namely, the construction of the iron and metal work at the workshop of Messrs. Fawcett, Preston and Company. You will find from the evidence of Robinson that he was employed in making the gun-carriages which we have spoken of already, and that during his employment in the making of the gun-carriages Mr. Hamilton was there and looked at the gun-carriages. It may be treated as very trivial and very idle to endeavor to establish a particular connection between one person and another, or of one person with a particular transaction, to say that he went to a particular place, and that he looked at something. My learned friend was rather witty on that, and said it was true, and a lamentable fact, but still it must be admitted that Mr. Hamilton had looked at these gun-carriages. Now, we know who Mr. Hamilton was; Mr. Hamilton was the son of a gentleman who had borne a very high civil appointment in the United States, and Mr. Hamilton is at this present moment an officer in the confederate navy. He, in all probability, did not resort to the shop of Messrs. Fawcett, Preston and Company, or to any other place of business, without any definite purpose; and I ask you again what was the purpose of the visits of Mr. Hamilton, this naval officer of the Confederate States, to the shop of Messrs. Fawcett, Preston and Company at the very time when the construction of the gun-carriages and the machinery for the Alexandria was going forward? At this very time why should those visits have been made? Then, again, we have the evidence of Carter, to which I think I have adverted; we have the evidence of Hodgson that the vessel was spoken of as a gunboat, but I do not rely on those mere matters of description, because I think we have incontestably proved what the real nature of the vessel was.

Now, gentlemen, I must say a word or two, and they shall be very few, with reference to some observations which my learned friend has made upon the character of some of my witnesses, and upon the effect of their evidence. Having proved that these gentlemen resorted to the building yard and to the machine shop, the next matter to satisfy you about was who and what they were; and it was indispensable to connect, for any practical purpose, these gentlemen in some degree of relation with the confederate government; at least I will not say it was indispensable, but it was a matter of very great and vital importance. Now, have we done that? I do not think, really, that Mr. Chapman, though by a statement which he made he laid himself open to observations not altogether unjust, and of which it is not for me to complain—although Mr. Chapman put himself in that position, I do not recollect that his evidence was of any very great moment; and that which it might be supposed he would prove was abundantly proved, and with corroborative evidence of the most material character, by the witnesses who followed. Now, it is not for me or any counsel to justify, in his advocacy of a cause, either for the Crown or for the subject, anything which a witness called on his side may state, and which is discreditable to the witness.

It is not for me, therefore, to gainsay the justice of the observation of my learned friend against Mr. Chapman, based on his own account of himself—that he went to the office of Fraser, Trenholm and Company, passing himself off as a secessionist. That, of course, was deceit. It was an act which we are not called upon to justify, and by which we are not in any way affected, because I do not think that the evidence of Mr. Chapman amounted to anything material, when the rest of the proof is regarded.

But I now come to the evidence of a witness upon whom still more severe observations were made by my learned friend, and whose testimony is no doubt of very great importance on the part of the Crown in this case. I mean the witness Yonge. This man has been called a traitor; at all events, the fact is that he was in the employment of the Confederate States, and that he was apparently in the official confidential employment of Captain Bulloch, from whom he received a commission as assistant paymaster. And it is true that the information which he obtained under these circumstances he has communicated (or he would not have been here as a witness) to those who, on the part of the Crown in this information, have sought for evidence to support it. Neither am I called to justify the conduct of Mr. Yonge, any more than I am called upon to justify what may be called his domestic misconduct, although I think my learned friend, who for the present, at all events, must be taken to have southern sympathies, was a little hard upon Mr. Yonge when he gave that account of the small nigger as a

matter of merchandise and sale, which my friend perfectly well knows, and I will not call them his clients, but those who view the southern confederacy with favor, perfectly well know, would not be a discreditable act over the frontier which divides, or may divide, the northern from the southern States.

SIR HUGH CAIRNS. I beg my learned friend will consider me as entirely neutral in the contest.

THE ATTORNEY GENERAL. I think, gentlemen, you will attach no importance to that. But I was coming to this. It is not material to you or to me what may be the character of Mr. Yonge. Strictly speaking, what you want to know, and are entitled to know, is, how far, whatever Mr. Yonge may have done, Mr. Yonge's account of the matters to which he speaks is pertinent to the inquiry which is now proceeding, and how far Mr. Yonge is to be believed. Now, undoubtedly, if Mr. Yonge were here vouching a statement, especially if it were in any degree unlikely or improbable; if he were vouching a mere statement, unsupported by documents and evidence which cannot admit of a doubt or distrust, there would be a very great deal of force in the observations of my learned friend; because he then might say, Well, you are here putting forward important statements to the prejudice of others upon the breath of a man who, on his own admission, has acted a part which my learned friend thinks fit to call treacherous, but, at all events, a part which probably respectable men would not like to resort to. But is he then to be disbelieved? Let us see what he states, and how far it is impossible to believe him. What he states is a matter of fact, proved by documents. He tells you, "I was assistant paymaster in the confederate navy." He tells you, "I was in the office of Captain Bulloch, at Savannah, previously to either of us coming to Liverpool during the pending hostilities, and I know that Captain Bulloch held an official position from the official communications which passed from time to time between him and the secretary of the navy, Mr. Mallory." Does any one doubt that? Is there anything in all these statements by him about himself to make them either improbable or incredible? But then he goes on to say that he came to Liverpool with Captain Bulloch. Can that be doubted? "I was introduced at Liverpool by Captain Bulloch to Messrs. Fraser, Trenholm and Company." Does any one doubt that? "There was an office there in which we sat." What the business was that was transacted in that office I am not able, according to the rules of law under the ruling of the learned judge, to obtain. But the witness goes on to say: "I was appointed without a written commission by Captain Bulloch to act then at Liverpool as assistant paymaster. I accepted the appointment, and I acted upon it." How did he act upon it? "I made requisitions to Captain Bulloch, who supplied me with funds, by which I held drafts on Fraser, Trenholm and Company. They honored those drafts from month to month, and out of the proceeds of those drafts I made payment to various naval officers in the service of the confederates, according to their rank and the rules of the service in that respect." Now, gentlemen, can any one of those facts be doubted? Why, we have Messrs. Fraser, Trenholm and Company very fairly, when asked to do so, producing the pay-notes. They were monthly pay-notes. And the time that Mr. Yonge was apparently in the service as paymaster at Liverpool was about five months, and therefore it is taken that all the notes are produced. They are of one common form; the amounts vary. The witness Yonge is described in his official character of assistant paymaster. And therefore, gentlemen, it is the same thing as if Messrs. Fraser, Trenholm and Company, or any one of the gentlemen composing that firm, had been put into the box to prove, and had proved, the fact who dealt with Mr. Yonge during the time he has spoken of. "We were, as it were, bankers; he, as assistant paymaster, drew upon us for the pay of the naval officers; we honored his drafts." And the fact of the drafts being produced from the custody of those gentlemen would be, of course, conclusive that the money was paid. Now, it is not suggested that Mr. Yonge, being in this confidential position of paymaster, betrayed his trust in that respect. He has only openly stated (and Messrs. Fraser, Trenholm and Company had the means of contradicting or corroborating it) that such were the amounts he obtained; and he has told you in some detail the various persons to whom the payments were made, those various persons being naval officers, and persons bearing naval commissions under the government of the Confederate States.

But, gentlemen, it goes on: Mr. Yonge, having acted as assistant paymaster, but without a formal written commission or authority, leaves Liverpool with the now famed Alabama, and he sees the armament of the vessel completed out of the Queen's dominions, and at a very considerable distance from them. He serves and acts for some time in his old character of assistant paymaster on board that ship; and then Captain Bulloch thinks it right that his commission, or authority, I suppose, should no longer depend on mere communication between the two, and he gives him a formal written appointment or commission to act in that character, and he continues to act in that character. He continues to make payments as assistant paymaster. And then he tells you that certain payments were made, I think on account of advance notes, to the wives, or friends, or children of persons serving on board the war-ship Alabama, and that those notes were paid. Of course they would still be in the hands of the

persons to whom they were delivered until the service of their husbands or fathers, whatever they may be, should come to an end. And Mr. Yonge tells you that they were honored and paid by the same firm of Frazer, Trenholm and Company.

Gentlemen, what we called Mr. Yonge for was not to prove directly the intent with which the vessel was constructed and fitted out. It was to prove that Messrs. Frazer, Trenholm and Company, that Captain Bulloch, that Mr. Hamilton, and Captain Teasier were really invested with the character of, and acted as, agents for and on behalf of the confederate government. And I do confidently appeal to you, and to your knowledge and recollection of the evidence, as to whether those facts are not abundantly proved—I will not say out of the mouth of Mr. Yonge, but by statements of his which received the strongest and most conclusive corroboration by documents which are in evidence before you?

Gentlemen, these are the only remarks which I feel it my duty to make to you on the witnesses in the case. They are, as it happens, all on one side, and it follows that all my learned friend could do with regard to the evidence was to endeavor to depreciate in your judgment the value of the testimony adduced against his clients; at the same time he was at liberty, if that testimony was not true to the letter, to contradict it; but he was not able to afford a tittle of contradiction to it.

Gentlemen, with these remarks I will finish my address to you by saying, that on the part of the Crown we are not contending here for victory or for mastery. These proceedings have been taken, as I have mentioned to you, although upon information supplied more or less by officers and agents of the United States government—these proceedings, I say, have been taken on the sole and exclusive responsibility, and in exercise of the judgment, of those who are responsible for advice given to the government of this country; and I think that my learned friend need hardly again and so pointedly have alluded, in his concluding observations, to what he assumed to be the fact, that these proceedings were urged and pressed forward by the American minister, and that the government of this country were so weak, or so wicked, or both, as to abnegate the exercise of their own judgment, and to listen to and to be influenced by the urgencies of the minister of a foreign state. Gentlemen, I think that the object of this was certainly to prejudice your minds, because nothing could be more distasteful to an Englishman, nothing more likely to arouse his indignation, and nothing more likely to carry away his judgment from a calm consideration of the matter before him—nothing could be more likely to have these effects than to instill into his mind, and to attempt to persuade him that such was the fact; that an act, such as a prosecution or a proceeding of this kind, was not the independent and the spontaneous act of those whose duty it is to put the law in force, but involved a lending of itself by the government of this country to the pressure and to the urgencies of a foreign state, which, properly speaking, can have no right in the smallest degree to interfere with, or to endeavor to influence, the administration of the law of this country. For the purpose of prejudice I cannot help thinking that my learned friend has made these frequent allusions to the American authorities. There is no foundation in fact for them, and there is no foundation in reason for them, except that, by repeating them in your hearing, and by instilling them into your minds as if they were facts, my learned friend, taking a wrong estimate of your judgment and intelligence in dealing with the case, has probably arrived at the conclusion that he might produce an inclination in your minds rather to listen to and to side with the case of the defendants than with the case of the Crown, asserting, as he does, that the Crown is unduly influenced by the representations to which no officer of the Crown could possibly listen for one moment.

Gentlemen, my learned friend concluded his very able address to you by an eloquent declamation, asking you if you wished that this ill consequence should be avoided and that disastrous conclusion escaped, if you wished almost anything that a human mind could desire, you would carry out that view by finding a verdict for the defendants. Now, gentlemen, declamation of that kind is, I would say, properly admissible in the conduct of a defense, but I think it would be very unbecoming in me, acting on the part of the Crown, to follow the example of my learned friend, and to endeavor, at the close of my address, to carry away or influence your feelings instead of being satisfied with that which it is my sole duty to do, namely, with an appeal to your judgment, to your understandings, and to your convictions, on the evidence as it lies before you.

The act out of which these proceedings has arisen is a wholesome and politic act, not very happily expressed, I agree, no more than the sister act is found to be in the United States; but it is a politic act, and the existence of this act in our statute book imposes upon the government a threefold duty, or rather a twofold duty, to enforce the law as it affects the subjects of the Crown, and also a duty in the observance of neutrality between belligerents in the event of cases being brought to the knowledge of those who give the Crown responsible advice of the violation of the provisions of this statute. It is, I say, the duty of the Crown, not only in the discharge of its ordinary functions of enforcing and vindicating the law, but also in its relation to a friendly and belligerent power, by whom, be it again recollected, a similar act was provided even before our own act came into existence, the benefit of which we might

have had at any period since its passing, in 1808, and the benefit of which we might have at any time hereafter in the event of becoming belligerents, and the United States being neutral. I say, under these circumstances there is cast on the Crown, and on those who act for it, the double duty of the ordinary vindication of the law, and of a regard to the fair claims of the powers happening at the time to be at war.

All I ask you to do is this, you will take the law, so far as it affects your decision, of course, from my lord. The facts you will judge of on the evidence, no doubt availing yourself of such observations on these facts as the great experience and knowledge of my lord will suggest to him, or enable him to make available to you. I ask you to give your conclusion in this case on the evidence, and I will state at once what I intended to have stated a little earlier, that so far I agree with my learned friend that the intent must be an intent of one or more having at the time the means and opportunity of forwarding or furthering such intent by acts. I agree that anything else, called an intent, or that which would be called an intent in the mind of any person not of this description, must be treated properly as a mere wish, imagination, or desire. By "intent," undoubtedly, the act means practical intent. But here you have various persons, apparently with the power of influencing the destination of this ship. You have Fawcett, Preston and Company, you have Miller, you have Fraser, Trenholm and Company, you have certain confederate officers. I think my lord will tell you that if you are satisfied that such intent was entertained by any one of those, or even by the confederate government itself; that if you are satisfied that those who harbored that intent and entertained it had the power, either original or conceded to them by others, of carrying that intent into execution, that is, the practical intent, whether entertained by Fawcett, Preston and Company or no, that would be sufficient under the statute to affirm the forfeiture of this ship. At the same time, I do not at all depart from that which I have stated throughout, that it appears to me evident that this was an intent common to several, an intent which, at all events, my learned friend's clients, Messrs. Fawcett, Preston and Company, participated in and shared. These, gentlemen, are the observations I have thought it my duty to make. I leave the case in your hands, and on the part of the Crown I need hardly say that whether you affirm the forfeiture as well founded, or whether you arrive at an opposite conclusion, whichever it may be, those who act for the Crown feel that they have but done their duty in the present case. They have done it, as I observed some time ago, in the more lenient way, and not in the more severe manner, and whatever your verdict may be in the matter, those who act for the Crown will be entirely satisfied.

SUMMING UP.

FOURTH DAY, THURSDAY, *June 24, 1863.*

LORD CHIEF BARON. Gentlemen of the jury: This is an information on the part of the Crown, following a seizure by some officers of the government taking possession of a vessel which was in the course of building at Liverpool. It had not been completed. It is admitted that it was not armed; and the question is, whether the condition of the vessel falls within the foreign enlistment act, as to which upon all questions of fact you will exercise your own right of deciding.

Gentlemen, the information is exceedingly long, containing some ninety counts; and the way in which that arises is this. The seventh clause of the act of Parliament speaks of its being unlawful to equip, to furnish, to fit out, or to arm a vessel. Then there are counts charging the defendants, first, with furnishing, then with equipping, then with fitting out, but not with arming. Then the various forms in which the endeavor, the attempt, the being concerned, and so on, can be put, are all repeated over again with every variety of the equipping, furnishing, fitting out, and so on. And in that way the counts are swelled out to the number of ninety. But they all come at last to this question: Was this vessel, as then prepared, at the time of the seizure, an object of seizure under the act in question?

The case you have to decide on the present occasion is no doubt one not merely of great importance, but really is a momentous question. It is a question the importance of which it is impossible to exaggerate, and which one approaches with varied sentiments. One certainly is a feeling of the deepest regret that such a question should ever have arisen, and I cannot help expressing the deepest almost anguish, that one feels, that such a question should have arisen by dissension among those who are connected with us by the dearest possible ties that can bind nation to nation; a common lineage, a common language, common laws, and a common literature, and above all—I say above all these—a strong desire for constitutional freedom.

But, gentlemen, passing from that which is really a matter of feeling, which it is impossible not to entertain, and entertaining not to express, let us go at once to the business of the moment.

The charge is only that there should be a condemnation of the vessel as being properly seized; but that seizure necessarily involves the commission of a misdemeanor.

And then the inquiry is and must be: Was a misdemeanor committed under the terms of the act of Parliament? If there was, and if the ship has been seized in consequence of that misdemeanor, the information is right, and your verdict must be for the Crown. If there was not (and I shall presently state to you what appears to me to be the question of fact you have to try) then the information founded upon the seizure ought to have a different termination, and your verdict ought to be for the defendants.

Gentlemen, I am rather disposed to agree with what fell from Sir Hugh Cairns as to the line which is to be taken with respect to the charge which unquestionably involves a charge of crime. The learned attorney general is quite right in saying that there are occasions where, upon facts being proved to which no answer is given, the verdict may very well be for the Crown in an accusation of a certain kind. I do not think it necessary to go into any particulars, or to cite examples, or to do anything more than to say that such may be the case. But, generally speaking, there can be no doubt it is in this country, and I hope it will continue to be so, the privilege of the accused to stand out and say, "Prove whatever you allege against me, and do not call on me to disprove it." And so far as you have to deal with facts, and to come to conclusions satisfactorily in your judgments, no doubt you may act on the unsupported testimony of not very creditable witnesses, if under the circumstances you believe them. On the other hand, you ought to be thoroughly persuaded of the truth of what involves an accusation of crime, although it takes only the character of the seizure of a vessel.

Gentlemen, I for one must protest against the doctrine that no one man is to be convicted of any crime if there is any possible solution of the circumstances by the imagination of his innocence. We might just as well shut up courts of criminal justice if that were to be the rule. Neither property nor life would have any protection if that were so. But there must be, in my judgment, at all times before conviction takes place, that sober satisfactory persuasion that the truth is a verdict of guilty which a man would have in the conduct of his own most important concerns. To say that it is free from doubt is to take it out of the ordinary category of human affairs. There is nothing free from doubt. The clearest testimony of all the witnesses, the most respectable that ever were congregated, may be the result of systematic perjury. But you cannot assume that so as to get rid of testimony as to which no man entertains a doubt. It seems to me, therefore, gentlemen, that neither are you to take the extreme case which some persons contend for in the case of murder, that if there be the least shadow of any doubt whatever you are to acquit the prisoner. Not so. There must be a grave doubt, and no doubt you must have a thorough persuasion and satisfaction with respect to guilt before you can convict; undoubtedly that persuasion must be arrived at in the manner described by the learned solicitor general, and I cannot do better than express myself in the manner in which he did in the House of Commons in the now celebrated and able speech which he made, and which we have all read. It must be by proof, and not by suspicion; and in that point of view no doubt the question that might be raised before you would in point of fact be this: Are certain parts of the case matters of mere grave suspicion, or are they accompanied by such persuasions of the truth of the facts suggested or stated as to lead you to be satisfied that they did occur? Now, gentlemen, with these observations I will go at once to the statute in question, and to points of fact which I think I ought to submit to you.

Gentlemen, that statute is one which was passed in the year 1819, upon which no question has ever arisen in our courts of justice, and it is here before you for the first time. But it so happens that we have expositions of the statute by decisions in the American courts, which we very justly pay the greatest respect to. For two of the most celebrated writers upon law, Mr. Chancellor Kent and Mr. Justice Story, are Americans, and they have contributed certainly more to render law a science and to render the pursuit of it, I was almost going to say captivating, than any writers on this side of the Atlantic for thirty or forty years past.

Now I find in the Commentaries of Chancellor Kent this statement. He says that on a certain occasion it was contended on the part of the French nation that neutral governments were bound to restrain their subjects from selling or exporting articles contraband of war to the belligerent powers, but it was satisfactorily shown on the part of the United States that neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent powers contraband articles subject to the right of seizure *in transitu*. This right has since been explicitly declared by the judicial authorities of this country. The right of the neutral to transport and of the hostile power to seize are conflicting rights; and neither party can charge the other with a criminal act. The cases that are referred to in the note are those very cases that have been mentioned at the bar, two of them by Sir Hugh Cairns, and another, I think, by the learned attorney general.

Gentlemen, that is the expression of Chancellor Kent in his Commentaries upon American law, which are very well worth reading by anybody who cares to study law at all, even English law, because they contain unquestionably one of the best and ablest, not the worse for being the shortest, account of the belligerent rights and the rights of nations in the very beginning of Chancellor Kent's Commentaries.

Now, in the case of the *Independencia*, Mr. Justice Story, in giving the judgment of the Supreme Court of the United States, says thus: "But there is nothing in our law or in the law of nations that forbids our citizens from sending armed vessels as well as munitions of war to foreign parts for sale. It is a commercial adventure, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." These, gentlemen, are authorities which show that where two belligerents are carrying on war, the subject of a neutral power may supply either without any breach of international law, and certainly without any breach of the foreign enlistment act, (and it does not say a word about it,) all the munitions of war, gunpowder, every description of fire-arms, cannon, every kind of weapon, in short, whatever can be used in war for the destruction of human beings who are contending together in this way. Well, gentlemen, why should ships be an exception? In my opinion, in point of law, they are not. Presently I shall have to put to you the question of fact about the *Alexandra*, which you will decide. The foreign enlistment act it is now necessary for me to advert to, in order to tell you what is the construction which I put on the seventh section, which alone we have to do with on the present occasion. Now the title of the act: "To prevent the enlistment or engagement of his Majesty's subjects to serve on foreign service and to prevent?" (the word is not repeated, but I do so to make the matter clear) "and to prevent the fitting out or employing in his Majesty's dominions vessels for warlike purposes without his Majesty's license." And then I advert to the preamble. The title to an act of Parliament is not part of the statute, and I believe it is generally held by all lawyers that, properly speaking, it throws no light upon it. You cannot refer to it, for the title is, I believe, only put to the act after it has passed. I think that is the general rule. Therefore you cannot look to something which is put to it after it has passed for any explanation of what has gone before. But the preamble, which is part of the act, is this: "Whereas the enlisting," and so on, "and the fitting out and equipping and arming of vessels by his Majesty's subjects, without his license, for warlike operations in or against the dominions or territories of any foreign power, &c., is and may be prejudicial to and tend to endanger the peace and welfare of the community. And whereas the laws in force are not sufficient to prevent the same."

And then comes the seventh section, which I pass to at once, as really being the only matter in the act we have to deal with. We have nothing to do with enlisting or anything of the kind. The seventh section is as follows: "And be it further enacted that if any person within any part of the United Kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave and license of his Majesty, for the purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, and procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince," and so on, that person is guilty of a misdemeanor, is liable to fine and imprisonment, and the vessel is forfeited and may be seized.

Now, gentlemen, the question that I shall propose to you is this: whether you think that this vessel was merely in the course of building for the purpose of being delivered in pursuance of a contract, which I own I think was perfectly lawful; or whether there was any intention that in the port of Liverpool or any other English port (and there is certainly no evidence of any other) the vessel should be equipped, fitted out, and furnished, or armed for the purpose of aggression. That is the question.

Now, with respect to the question of building, it is certainly remarkable that there is not a word said about it. It is not said that you may not build vessels for the belligerent power. There is nothing suggested of the kind, and clearly by the common law and by the passages I have read to you, surely if from Birmingham either state may get any quantity of destructive instruments of war, and if from the various parts of the kingdom where gunpowder is made they can obtain any quantity of that destructive material, why should they not get ships? Why should ships alone be themselves contraband?

Now, gentlemen, I will state to you why I put the question I did to the attorney general. I said, Do you mean to say that a man cannot make a vessel intending to sell it to either of the belligerent powers that requires to have it—to that one which will give him the largest price for it? Is that unlawful? The learned attorney general, I own, rather to my surprise, declined giving an answer to a question which I thought very plain and very clear. You saw what passed; I must leave you to judge whether there was anything improper in the manner in which I (so to express it) communed with the attorney general on the law, so that we might really understand each other, and that I might have my mind instructed, fitted out, equipped and furnished, if you please, by the contents of his. Gentlemen, the learned attorney general declined to answer that question. But, I think by this time, having read to you these matters, you are lawyers enough to answer it yourselves. I think that answer ought to be, "Yes; a man may make a vessel." Nay, more, according to the authority I have just read, he may make a vessel and arm it, and then offer it for sale. So Story lays down.

But I meant, gentlemen, as I said then, if I had got an affirmative answer to that question, to put another. If any man may build a vessel for the purpose of offering it to either of the belligerent powers who is minded to have it, may he not execute an order for it? Because it seems to me to follow as a matter of course, if I may make a vessel and then say to the United States, "I have got a capital vessel, it can easily be turned into a ship of war; of course I have not made it a ship of war at present; will you buy it?"—if that is perfectly lawful, surely it is lawful for the United States to say: "Make us a vessel of such and such description, and when you have made it send it to us." Now the learned counsel certainly addressed themselves very much to this view of the matter. It was said, But if you allow this you repeal the statute. Gentlemen, I think nothing of the kind. What that statute meant to provide for was, I own, I think, by no means the protection of the belligerent powers. I do not think their protection entered into the heads of those who framed this statute. Otherwise they would have said: You shall not sell gunpowder—you shall not sell guns. There are places that now and then explode in different parts of the kingdom, and which would have complained very heartily if they had said: You shall not sell gunpowder—you shall not sell arms. Why, all Birmingham would have been in arms. But the object of this statute was this: We will not have our ports in this country subject to possibly hostile movements; you shall not be fitting up at one dock a vessel equipped and ready, not being completely armed, but ready to go to sea, and at another dock close by be fitting up another vessel, and equipping it in the same way, which might come into hostile communication immediately, possibly before they left the port. It would be very wrong if they did so, but it is a possibility. Now and then it has happened, and that has been the occasion of this statute.

Well, if that be so, let us see what is the condition of this vessel. The vessel was clearly nothing more than in course of building. I do not know what conclusion you would come to as to what service she was intended for. If it became a matter of importance to decide that, it would be a question for you to decide whether it amounted to more than a strong suspicion, or whether it was so made out to your entire satisfaction as to justify a verdict in that direction. But, gentlemen, I do not propose to put that to you; nor do I think it worth while to follow the learned attorney general through the whitewashing of Clarence Randolph Yonge; because, after all, what he proved seems to me to have the least possible connection with, or effect upon, the real question in this case; which I take to be this: Was the vessel built, or was it merely in course of building?

Now, gentlemen, I present the matter to you in another point of view. The offense against which this information is directed, is the "equipping, furnishing, fitting out, or arming." Gentlemen, I have looked, so that I might not go wrong, (as we have the advantage of having it here,) at Webster's American Dictionary, a work of the greatest learning, research, and ability. No one can complain that I refer to that. It appears there that to "equip" is to "furnish with arms." In the case of a ship especially, it is "to furnish and complete with arms." That is what is meant by "equipping." "Furnish" is given in every dictionary as the same thing as "equip." "To fit out," is "to furnish and supply" as to fit out a privateer. And I own that my opinion is, that "equip," "furnish," "fit out," or "arm," all mean precisely the same thing. I do not mean to say that it is absolutely necessary, (and I think that the learned attorney general is right in that; it is not perhaps necessary that the vessel should be armed at all points; though it may be that the case cited from 6th Peters's Reports by the learned attorney general, somewhat late in the day, is a case where the jury found that the vessel was actually fitted out. They found so most properly, for she actually sailed away with the captain, who afterwards turned her into a privateer, and she went away in a great measure fitted. The jury found that she was fitted. The question is whether you think that this vessel was fitted. Armed she certainly was not, but was there an intention that she should be furnished, fitted or equipped at Liverpool? Because, gentlemen, I must say it seems to me that the Alabama sailed away from Liverpool without any arms at all; merely a ship in ballast, unfurnished, unequipped, unprepared, and her arms were put in at Terceira, not a port in her Majesty's dominions. The foreign enlistment act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever. Now, gentlemen, I do not know whether you desire me to go over the evidence.

The JURY. Quite unnecessary; quite unnecessary.

LORD CHIEF BARON. I think the most important evidence given is that of the Commander Inglefield, of whom both sides have spoken in the highest terms of approbation and respect. Captain Inglefield said this: "I am captain of her Majesty's ship *Majestic*, at Liverpool. I have examined the *Alexandra*. The examination took place subsequent to the seizure. She is principally teak, strongly built; certainly not intended for merchandise." I do not think it has ever been pretended that she was intended for merchandise. "Might be used as a yacht; easily converted into a vessel of war." And, gentlemen, certainly I was pleased to observe the candor and fairness with which a man like Captain Inglefield spoke of the matter. Everybody else who

came (so far as I remember) had to be cross-examined before they said anything about its being fit for a yacht. Captain Inglefield said it was probably as fit for a yacht as any vessel ever built—"easily convertible into a vessel of war, and her strength is sufficient for that purpose; she has complete accommodation for men and officers; as to stowage, she has only stowage sufficient for her crew, suppose her crew to be thirty-two men; she is capable of being converted into a man-of-war; but there are no guns or preparations for that; she is without any of those appurtenances which indicate any indication of guns being put on board; she might have two or three guns; probably she would carry three of various size; the bulwarks would be low in a man-of-war; these bulwarks were low, but not of the same description I have seen." Then he is cross-examined: "The vessel was fitted for a yacht; not capable of being used for merchandise, not room for cargo; there is no difference between its entries and those for a yacht. In short, what he makes out is, that she might have been built for a yacht or might have been built as a vessel capable of being convertible into a war vessel. But the question is: Was there any intention that in the port of Liverpool, or in any other port, she should be, in the language of the act of Parliament, either "equipped, furnished, fitted out, or armed" with the intention of taking part in any contest? That there was a knowledge that very likely she would be so applied, there can be no doubt, as there is when persons send powder. I take it for granted that there are agents on both sides. One openly buying every munition of war, (and they have a right to do it, and the subjects of this country have a right to sell to them,) and openly carrying them away; the others buying wherever they can, and probably endeavoring to break the blockade, or to smuggle in some way or other the same description of munitions of war. Gentlemen, if you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. But if you think the object really was to build a ship in obedience to an order, and in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the foreign enlistment act has not been in any degree broken. I leave you to find your verdict, unless you wish me to read the evidence over to you.

The JURY. No, we do not wish that, my lord.

ATTORNEY GENERAL. Before the jury give their verdict, perhaps your lordship would give us an opportunity of tendering a bill of exceptions to a portion of your lordship's ruling.

LORD CHIEF BARON. I will except any bill of exceptions you wish to tender.

ATTORNEY GENERAL. Strictly speaking, it must be done before the verdict is given.

SIR HUGH CAIRNS. Anything in point of form we will dispense with. The convenient way would be to do it afterward, I suppose, from the notes of charge.

The jury considered their verdict for a short time.

The ASSOCIATE. Have you agreed to your verdict, gentlemen?

The FOREMAN. Yes.

The ASSOCIATE. How do you find?

The FOREMAN. For the defendants.

The ASSOCIATE. You find a verdict for the claimants?

The FOREMAN. A verdict for the defendants.

The ATTORNEY GENERAL. Would your lordship allow me to hand up a very brief note, so that there may be no mistake? (handing a paper to his lordship.)

SIR HUGH CAIRNS. Perhaps your lordship will let us have a copy of it?

LORD CHIEF BARON. It need not be done now. You may wish to put it in some other shape. There will be no mistake about it.

The ATTORNEY GENERAL. I was only anxious that we should quite understand what your lordship has ruled and laid down to the jury. That is very shortly stated.

LORD CHIEF BARON. I have no doubt that there is a very good note taken of what I have said. You have got here, "that the vessel was not intended to be fitted." It should be, "that the vessel was in course of building, for the purpose of performing the contract, and that there was no intention that she should be equipped or furnished, or armed, or fitted out at Liverpool.

The SOLICITOR GENERAL. That was not what your lordship said.

LORD CHIEF BARON. Certainly it was.

The ATTORNEY GENERAL. I understood your lordship to say that if the building was in fulfillment of a contract.

LORD CHIEF BARON. And it was not intended that she should be equipped, fitted out, and furnished, and so on, at Liverpool.

The ATTORNEY GENERAL. Then there are the other points, my lord.

LORD CHIEF BARON. Every question I put to the jury, I put in the language of the act of Parliament, that if it was not intended that she should be "equipped, furnished, fitted out, or armed" at Liverpool. I took special care of that.

The ATTORNEY GENERAL. I think that is the point.

LORD CHIEF BARON. No, you have got here that if the vessel was not intended to be furnished.

The ATTORNEY GENERAL. No, my lord, it is "furnished or fitted out."

The SOLICITOR GENERAL. Your lordship said the words were the same. That every one of the words required a warlike armament at Liverpool. That is the point.

LORD CHIEF BARON. Mr. Attorney General, I will not bind you to what passes at the present occasion. There cannot be any doubt now. I cannot alter the thing, and I have no doubt that you have a very accurate note of what I have said.

The ATTORNEY GENERAL. I only wish that we should have your lordship's concurrence now, while the matter is fresh in your lordship's recollection.

LORD CHIEF BARON. It cannot be a question of recollection. Depend upon it there is an accurate note taken of what I have said.

The ATTORNEY GENERAL. Will your lordship allow me to send in a full note from the best materials that we can get?

LORD CHIEF BARON. Certainly.

APPENDIX.

Information containing the first eight counts, and abstract of remainder.—Vide page 7 of report.

IN THE EXCHEQUER.

The twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three.

MIDDLESEX, to wit :

Sir William Atherton, knight, attorney general of our lady the Queen, who prosecutes for her Majesty in this behalf, informs the court that heretofore and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the fifth day of April, in the year of our Lord one thousand eight hundred and sixty-three, to wit, at Ratcliff, in the county of Middlesex, a certain officer of her Majesty's customs, to wit, Edward Morgan, then by law empowered so to do, did seize and arrest to the use of her Majesty as forfeited a certain ship or vessel called the *Alexandra*, together with the furniture, tackle, and apparel belonging to and on board the said ship or vessel.

First count.—For that certain persons, to wit, William Cowley Miller, Thomas Miller, Charles Kuhn Priolean, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthlon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the fifth day of April, in the year of our Lord one thousand eight hundred and sixty-three, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel with intent and in order that such ship or vessel should be employed in the service of certain foreign States, styling themselves the Confederate States of America, with intent to cruise and commit hostilities against a certain foreign state, with which her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Second count.—And also for that certain persons, to wit, William Cowley Miller, Thomas Miller, Charles Kuhn Priolean, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthlon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel, with intent and in order that such ship or vessel should be employed in the service of certain foreign States, styling themselves the Confederate States of America, with intent to cruise and commit hostilities against citizens of a certain foreign state, with whom and with which respectively her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, citizens of the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by

force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Third count.—And also for that certain persons, to wit, William Cowley Miller, Thomas Miller, Charles Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel, with intent to cruise and commit hostilities against a certain foreign state, with which her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Fourth count.—And also for that certain persons, to wit, William Cowley Miller, Thomas Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, at Ratcliff, in the county of Middlesex, without the leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel, with intent to cruise and commit hostilities against citizens of a certain foreign state, with whom and with which respectively her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, citizens of the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Fifth count.—And also for that certain persons, to wit, William Cowley Miller, Thomas Miller, Charles Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel, with intent and in order that such ship or vessel should be employed in the service of divers and very many persons exercising the powers of government in and over certain foreign states styling themselves the Confederate States of America, with intent to cruise and commit hostilities against a certain foreign state, with which her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Sixth count.—And also for that certain persons, to wit, William Cowley Miller, Thomas Miller, Charles Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel, with intent and in order that such ship or vessel should be employed in the service of divers and very many persons exercising the powers of government in and over certain foreign States styling themselves the Confederate States of America, with intent to cruise and commit hostilities against citizens of a certain foreign state, with whom and with which

respectively her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, citizens of the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Seventh count.—And also for that certain persons, to wit, William Cowley Miller, and Thomas Miller, Charles Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel with intent and in order that such ship or vessel should be employed in the service of divers and very many persons exercising the powers of government over part of a certain foreign people, to wit, part of the people of the United States of America, with intent to cruise and commit hostilities against a certain foreign state, with which her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Eighth count.—And also for that certain persons, to wit, William Cowley Miller, and Thomas Miller, Charles Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, *did equip* the said ship or vessel with intent and in order that such ship or vessel should be employed in the service of divers and very many persons exercising the powers of government over part of a certain foreign people, to wit, part of the people of the United States of America, with intent to cruise and commit hostilities against citizens of a certain foreign state, with whom and with which respectively her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, citizens of the republic of the United States of America, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Ninth count, same as first count, substituting "did furnish" for "did equip."

Tenth count, same as second count, substituting "did furnish" for "did equip."

Eleventh count, same as third count, substituting "did furnish" for "did equip."

Twelfth count, same as fourth count, substituting "did furnish" for "did equip."

Thirteenth count, same as fifth count, substituting "did furnish" for "did equip."

Fourteenth count, same as sixth count, substituting "did furnish" for "did equip."

Fifteenth count, same as seventh count, substituting "did furnish" for "did equip."

Sixteenth count, same as eighth count, substituting "did furnish" for "did equip."

Seventeenth count, same as first count, substituting "did fit out" for "did equip."

Eighteenth count, same as second count, substituting "did fit out" for "did equip."

Nineteenth count, same as third count, substituting "did fit out" for "did equip."

Twentieth count, same as fourth count, substituting "did fit out" for "did equip."

Twenty-first count, same as fifth count, substituting "did fit out" for "did equip."

Twenty-second count, same as sixth count, substituting "did fit out" for "did equip."

Twenty-third count, same as seventh count, substituting "did fit out" for "did equip."

Twenty-fourth count, same as eighth count, substituting "did fit out" for "did equip."

Twenty-fifth count, same as first count, substituting "did attempt and endeavor to equip" for "did equip."

Twenty-sixth count, same as second count, substituting "did attempt and endeavor to equip" for "did equip."

Twenty-seventh count, same as third count, substituting "did attempt and endeavor to equip" for "did equip."

Twenty-eighth count, same as fourth count, substituting "did attempt and endeavor to equip" for "did equip."

Twenty-ninth count, same as fifth count, substituting "did attempt and endeavor to equip" for "did equip."

Thirtieth count, same as sixth count, substituting "did attempt and endeavor to equip" for "did equip."

Thirty-first count, same as seventh count, substituting "did attempt and endeavor to equip" for "did equip."

Thirty-second count, same as eighth count, substituting "did attempt and endeavor to equip" for "did equip."

Thirty-third count, same as first count, substituting "did attempt and endeavor to furnish" for "did equip."

Thirty-fourth count, same as second count, substituting "did attempt and endeavor to furnish" for "did equip."

Thirty-fifth count, same as third count, substituting "did attempt and endeavor to furnish" for "did equip."

Thirty-sixth count, same as fourth count, substituting "did attempt and endeavor to furnish" for "did equip."

Thirty-seventh count, same as fifth count, substituting "did attempt and endeavor to furnish" for "did equip."

Thirty-eighth count, same as sixth count, substituting "did attempt and endeavor to furnish" for "did equip."

Thirty-ninth count, same as seventh count, substituting "did attempt and endeavor to furnish" for "did equip."

Fortieth count, same as eighth count, substituting "did attempt and endeavor to furnish" for "did equip."

Forty-first count, same as first count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-second count, same as second count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-third count, same as third count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-fourth count, same as fourth count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-fifth count, same as fifth count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-sixth count, same as sixth count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-seventh count, same as seventh count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-eighth count, same as eighth count, substituting "did attempt and endeavor to fit out" for "did equip."

Forty-ninth count, same as first count, substituting "did procure to be equipped" for "did equip."

Fiftieth count, same as second count, substituting "did procure to be equipped" for "did equip."

Fifty-first count, same as third count, substituting "did procure to be equipped" for "did equip."

Fifty-second count, same as fourth count, substituting "did procure to be equipped" for "did equip."

Fifty-third count, same as fifth count, substituting "did procure to be equipped" for "did equip."

Fifty-fourth count, same as sixth count, substituting "did procure to be equipped" for "did equip."

Fifty-fifth count, same as seventh count, substituting "did procure to be equipped" for "did equip."

Fifty-sixth count, same as eighth count, substituting "did procure to be equipped" for "did equip."

Fifty-seventh count, same as first count, substituting "did procure to be furnished" for "did equip."

Fifty-eighth count, same as second count, substituting "did procure to be furnished" for "did equip."

Fifty-ninth count, same as third count, substituting "did procure to be furnished" for "did equip."

Sixtieth count, same as fourth count, substituting "did procure to be furnished" for "did equip."

Sixty-first count, same as fifth count, substituting "did procure to be furnished" for "did equip."

Sixty-second count, same as sixth count, substituting "did procure to be furnished" for "did equip."

Sixty-third count, same as seventh count, substituting "did procure to be furnished" for "did equip."

¶Sixty-fourth count, same as eighth count, substituting "did procure to be furnished" for "did equip."

Sixty-fifth count, same as first count, substituting "did procure to be fitted out" for "did equip."

Sixty-sixth count, same as second count, substituting "did procure to be fitted out" for "did equip."

Sixty-seventh count, same as third count, substituting "did procure to be fitted out" for "did equip."

Sixty-eighth count, same as fourth count, substituting "did procure to be fitted out" for "did equip."

Sixty-ninth count, same as fifth count, substituting "did procure to be fitted out" for "did equip."

Seventieth count, same as sixth count, substituting "did procure to be fitted out" for "did equip."

Seventy-first count, same as seventh count, substituting "did procure to be fitted out" for "did equip."

Seventy-second count, same as eighth count, substituting "did procure to be fitted out" for "did equip."

Seventy-third count, same as first count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Seventy-fourth count, same as second count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Seventy-fifth count, same as third count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Seventy-sixth count, same as fourth count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Seventy-seventh count, same as fifth count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Seventy-eighth count, same as sixth count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Seventy-ninth count, same as seventh count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Eightieth count, same as eighth count, substituting "did knowingly aid, assist, and be concerned in equipping," for "did equip."

Eighty-first count, same as first count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-second count, same as second count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-third count, same as third count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-fourth count, same as fourth count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-fifth count, same as fifth count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-sixth count, same as sixth count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-seventh count, same as seventh count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-eighth count, same as eighth count, substituting "did knowingly aid, assist, and be concerned in furnishing," for "did equip."

Eighty-ninth count, same as first count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninetieth count, same as second count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninety-first count, same as third count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninety-second count, same as fourth count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninety-third count, same as fifth count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninety-fourth count, same as sixth count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninety-fifth count, same as seventh count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninety-sixth count, same as eighth count, substituting "did knowingly aid, assist, and be concerned in fitting out," for "did equip."

Ninety-seventh count.—And also for that certain persons, to wit, William Cowley Miller and Thomas Miller, Charles Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very

many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, did attempt to fit out the said ship or vessel, with intent and in order that such ship or vessel should be employed in the service of divers and very many persons exercising the powers of government over part of a certain foreign people, to wit, part of the people of the United States of America, as a transport or store-ship, against a certain foreign state with which her Majesty was not then, to wit, on the day and year aforesaid, at war, to wit, the republic of the United States of America, contrary to the form of the statute in such case made and provided; whereby, and by force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, became and was forfeited.

Ninety-eighth count.—And also for that certain persons, to wit, William Cowley Miller and Thomas Miller, Charles Kuhn Prioleau, James Thomas Welsman, Eugene Tessier, James Bulloch, Matthew Butcher, Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, William Thompson Mann, and divers and very many other persons whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord one thousand eight hundred and nineteen, and before this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, to wit, on the day and year last aforesaid, within a certain part of the United Kingdom, to wit, Ratcliff, in the county of Middlesex, without any leave or license of her Majesty for that purpose first had and obtained, did equip, furnish, and fit out, and did procure to be equipped, furnished, and fitted out, and did knowingly assist and be concerned in the equipping, furnishing, and fitting out of the said ship or vessel, with intent and in order that such ship or vessel should be employed in the service of foreign states styling themselves the Confederate States of America, and in the service of divers and very many persons exercising and assuming to exercise the powers of government in and over certain foreign states styling themselves the Confederate States of America, and in the service of divers and very many persons exercising and assuming to exercise powers of government over part of a certain foreign people, to wit, part of the people of the United States of America, as a transport or store-ship, against and with intent to cruise and commit hostilities against a certain foreign state with which her Majesty was not then, to wit, on the day and year last aforesaid, at war, to wit, the republic of the United States of America, and against citizens of a certain foreign state with whom and with which respectively her Majesty was not then at war, to wit, citizens of the republic of the United States of America, contrary to the form of the statute in such case made and provided; whereby, and by force of the statute in that case made and provided, the said ship or vessel, together with the said tackle, apparel, and furniture, and the materials, arms, ammunitions, and stores belonging to and on board the said ship or vessel became and were forfeited.

Wherefore the said attorney general, on behalf of her Majesty, prays the consideration of the court in the premises, and that the said ship or vessel, together with her said furniture, tackle, and apparel, may, for the respective reasons aforesaid, severally remain forfeited.

WILLIAM ATHERTON.

Plea.

IN THE EXCHEQUER.

The second day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Her Majesty's attorney general and Sillem and others.

And hereupon Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, and William Thompson Mann, who claim the property of the said ship or vessel called the *Alexandra*, and the furniture, tackle, and apparel belonging to and on board the said ship or vessel to belong to them, by Edward Lee Rowcliffe, their attorney, appear here in court, and for plea to the said information say that the said ship or vessel, furniture, tackle, and apparel did not, nor did any or either of them, or any part thereof, become, nor are, nor is the same, or any or either of them, or any part thereof, forfeited for the several supposed causes in the said information mentioned, or for any or either of them, in manner and form as by the said information is charged. And of this the said claimants put themselves upon the country.

Whereupon issue was joined.

Orders for payment to Clarence R. Yonge, acting assistant paymaster of the Alabama, signed by Captain Bulloch.—(Vide p. 70 of report.)

Messrs. FRAZER, TRENHOLM & Co.:

LIVERPOOL, May 1, 1862.

Pay to the order of C. R. Yonge, assistant paymaster, on account of officers' pay, forty pounds three shillings and ninepence.

JAMES D. BULLOCH.

£40 3s. 9d.

LIVERPOOL, March 17, 1862.

Messrs. FRAZER, TRENHOLM & Co.:

Pay to the order of Assistant Paymaster C. R. Yonge, on account of officers' pay, two hundred and thirty-six pounds two shillings and sixpence.

JAMES D. BULLOCH.

£236 2s. 6d.

{ J. D. B. }
{ 17 March. }
{ 1d stamp. }

LIVERPOOL, June 2, 1862.

Messrs. FRAZER, TRENHOLM & Co.:

Please pay to the order of Clarence R. Yonge, assistant paymaster, forty-one pounds ten shillings and threepence, on account of officers' pay.

JAMES D. BULLOCH.

£41 10s. 3d.

Received the above amount.

C. R. YONGE.

LIVERPOOL, June 24, 1862.

Messrs. FRAZER, TRENHOLM & Co.:

Please pay to the order of Mr. C. R. Yonge, assistant paymaster, on account of officers' pay, two hundred and three pounds eight shillings and one penny, and charge
Your obedient servant,

JAMES D. BULLOCH.

£203 8s. 1d.

LIVERPOOL, July 21, 1862.

Messrs. FRAZER, TRENHOLM & Co.:

GENTLEMEN: Please pay to the order of Clarence R. Yonge, assistant paymaster, one hundred and fifty-four pounds seventeen shillings and sixpence, on account of officers' pay, and charge
Your obedient servant,

JAMES D. BULLOCH.

£154 17s. 6d.

Copy instructions and warrant to Clarence Randolph Yonge, as acting paymaster of the Alabama.—(Vide p. 72 of Report.)

LIVERPOOL, July 28, 1862.

SIR: You will join the Confederate States steamship Alabama, temporarily under the orders of Captain W. J. Butcher, and proceed in her to sea. The Alabama may have to cruise several days in the British Channel, and to touch at one or two ports. During this time you are strictly enjoined not to mention that you are in any way connected with the Confederate States navy, but you will simply act as the purser of a private ship. In this capacity you will keep account of all money paid, and you will assist Captain Butcher in any manner he may desire. You have been provided with an invoice of everything now on board the Alabama, as well as the cargo shipped on board the brig Agrippina, which vessel you will meet at the port to which the Alabama is bound. The invoice of the Agrippina's cargo gives the mark and number of every case and bale, the contents of each, and the part of the vessel in which it is stowed. You will endeavor to make yourself fully acquainted with the invoices, and examine the store-rooms, so that you will be able to give efficient aid in getting everything in its proper place when the transfer of stores is made. When the Alabama is fairly at sea you will mix freely with the warrant and petty officers, show interest in their comfort and welfare, and endeavor to excite their interest in the approaching cruise of the ship; talk to them of the southern States, and how they are fighting against great odds for only what every Englishman enjoys, "liberty." Tell them that at their port of destination a distinguished officer of the Confederate States navy will take command of the ship,

and he will ask them to ship for a cruise in which they will have the most active service, and be well taken care of. I do not mean that you are to make the men set speeches, or be constantly talking to them, but in your position you may frequently throw out to leading men hints of the above tenor, which will be circulated upon the berth deck. Seamen are very impressionable, and can be easily influenced by a little tact and management. When Captain Semmes joins, you will at once report to him, and act thereafter under his instructions. He will be a stranger to the ship and crew, and will be in a position of great responsibility and embarrassment. You have it in your power to smooth away some of the difficulties in advance, especially in having all the stores and cargo of the ship in an orderly state, and the men settled and well disposed, and I confidently rely upon your exertions to bring about such a state of things. You will consider yourself as temporarily under the orders of Captain Butcher, in whom I place great confidence, and by strict attention to your duties and the display of zeal and judgment in their execution you will evince a just appreciation of the trust reposed in you, and will prove that your appointment to so important a post has been deserved. Wishing you every success,

I am, respectfully, your obedient servant,

JAMES D. BULLOCH,
Commander Confederate States Navy.

C. R. YONGE,
Acting Assistant Paymaster.

LIVERPOOL, July 30, 1862.

SIR: By virtue of authority granted me by the Hon. S. R. Mallory, secretary of the navy of the Confederate States, I hereby appoint you an acting assistant paymaster. This appointment to date from the 21st day of December, 1861.

Very respectfully,

JAMES D. BULLOCH,
Commander Confederate States Navy.

CLARENCE R. YONGE,
Acting Assistant Paymaster Confederate States Navy.

Abstract of proclamation.

BY THE QUEEN—A PROCLAMATION.—(*Vide* p. 5 of Report.)

VICTORIA R.:

Whereas we are happily at peace with all sovereigns, powers, and states;

And whereas hostilities have unhappily commenced between the government of the United States of America and certain States styling themselves the Confederate States of America;

And whereas we, being at peace with the government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties;

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation;

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the fifty-ninth year of his Majesty King George III, intituled "An act to prevent the enlisting or engagement of his Majesty's subjects to serve in a foreign service, and the fitting out or equipping in his Majesty's dominions vessels for warlike purposes, without his Majesty's license," it is amongst other things declared and enacted as follows (the second section is here given at length; *vide* Appendix, page 139.)

And it is in and by the said act further enacted, that (the seventh section is here given at length; *vide* Appendix, page 142.)

And it is in and by the said act further enacted, that (the eighth section is here given at length; *vide* Appendix, page 143.)

Now in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal

proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as for example, and more especially, by entering into the military service of either of the said contending parties, as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war, or transport, of or in the service of either of the said contending parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas, with intent to enlist or engage in any such service, or by procuring or attempting to procure, within her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war, or privateer, or transport, by either of the said contending parties; or by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, dispatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties; all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.

And we do hereby declare that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril and of their own wrong; and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court, at the White Lodge, Richmond Park, this 13th day of May, in the year of our Lord one thousand eight hundred and sixty-one, and in the 24th year of our reign.

God save the Queen.

59TH GEORGE III, CHAPTER 69.

AN ACT to prevent the enlisting or engagement of his Majesty's subjects to serve in foreign service and the fitting out or equipping, in his Majesty's dominions, vessels for warlike purposes, without his Majesty's license. [July 3, 1819.]—*Vide* p. 3 of Report.

Whereas the enlistment or engagement of his Majesty's subjects to serve in war in foreign service, without his Majesty's license, and the fitting out and equipping and arming of vessels by his Majesty's subjects, without his Majesty's license, for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom; and whereas the laws in force are not sufficiently effectual for preventing the same:

Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, an act passed in the ninth year of the reign of his late Majesty King George the Second, intituled "An act to prevent the enlisting his Majesty's subjects to serve as soldiers without his Majesty's license;" and also an act passed in the twenty-ninth year of the reign of his said late Majesty King George the Second, intituled "An act to prevent his Majesty's subjects from serving as officers under the French King; and for better enforcing an act passed in the ninth year of his present Majesty's reign, to prevent the enlisting his Majesty's subjects to serve as soldiers without his Majesty's license; and for obliging such of his Majesty's subjects as shall accept commissions in the Scotch brigade in the service of the states general of the United Provinces, to take the oaths of allegiance and abjuration;" and also an act passed in Ireland in the eleventh year of the reign of his said late Majesty King George the Second, intituled "An act for the more effectual preventing the enlisting of his Majesty's subjects to serve as soldiers in foreign service without his Majesty's license;" and also an act passed in Ireland in the nineteenth year of the reign of his said late Majesty King George the Second, intituled "An act for the more effectual preventing his Majesty's subjects from entering into foreign service, and for publishing an act of the seventh year of King William the Third, intituled 'An act to prevent foreign education;'" and all and every the clauses and provisions in the said several acts contained, shall be and the same are hereby repealed.

2. *And be it further declared and enacted, That if any natural-born subject of his Majesty, his heirs and successors, without the leave or license of his Majesty, his heirs or*

successors, for that purpose first had and obtained, under the sign manual of his Majesty, his heirs or successors, or signified by order in council, or by proclamation of his Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist, or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of his Majesty shall, without such leave or license as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of his Majesty shall, without such leave and license as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to his Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavor to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of his Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

3. *Provided always, and be it enacted*, That nothing in this act contained shall extend or be construed to extend to render any person or persons liable to any punishment or penalty under this act, who at any time before the first day of August, one thousand eight hundred and nineteen, within any part of the United Kingdom, or of the islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the first day of November, one thousand eight hundred and nineteen, in any port or place out of the United Kingdom, or of the said islands, shall have taken or accepted, or agreed to take or accept, any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a soldier, or shall have served, or having so served shall, after the said first day of August, one thousand eight hundred and nineteen, continue to serve in any warlike or military operation, either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any commission, warrant, or appointment as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor, or marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said first day of August, continue to serve in and on board any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said first day of August,

continue in any foreign state, country, colony, province, or part of a province, or to or in any place beyond the seas, unless such person or persons shall embark at or proceed from some port or place within the United Kingdom or the islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this act, after the said first day of August, or shall embark or proceed from some port or place out of the United Kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said first day of November, or who shall, before the passing of this act, and within the said United Kingdom, or the said islands, or before the first day of November, one thousand eight hundred and nineteen, in any port or place out of the said United Kingdom, or the said islands, have hired, retained, engaged, or procured, or attempted or endeavored to hire, retain, engage, or procure any person or persons whatever to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged, or employed, contrary to the prohibitions respectively in this act contained, anything in this act contained to the contrary in anywise notwithstanding; but that all and every such person and persons shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was or were liable and subject to before the passing of this act, and as such person or persons would have been in, and been liable and subject to, in case this act and the said recited acts by this act repealed had not been passed or made.

4. *And be it further enacted*, That it shall and may be lawful for any justice of the peace residing at or near to any port or place within the United Kingdom of Great Britain and Ireland, where any offense made punishable by this act as a misdemeanor, shall be committed, on information on oath of any such offense, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace before whom such offender shall be brought to examine into the nature of the offense upon oath, and to commit such person to jail, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to appear and answer to any information or indictment to be preferred against him, according to law, for the said offense; and that all such offenses which shall be committed within that part of the United Kingdom called England, shall and may be proceeded and tried in his Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, or at the assizes or session of oyer and terminer and jail delivery, or at any quarter or general sessions of the peace in and for the county or place where such offense was committed; and that all such offenses which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in his Majesty's Court of King's Bench at Dublin, and the venue be laid at Dublin or at any assizes or session of oyer and terminer and jail delivery, or at any quarter or general sessions of the peace in and for the county or place where such offense was committed; and all such offenses as shall be committed in Scotland, shall and may be prosecuted in the court of judiciary in Scotland, or any other court competent to try criminal offenses committed within the county, shire, or stewartry within which such offense was committed; and where any offense made punishable by this act as a misdemeanor shall be committed out of the said United Kingdom, it shall be lawful for any justice of the peace residing near to the port or place where such offense shall be committed, on information on oath of any such offense, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace for such place; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offense upon oath, and to commit such person to jail, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offense in the superior court competent to try and having jurisdiction to try criminal offenses committed in such port or place; and all such offenses committed at any place out of the said United Kingdom shall and may be prosecuted and tried in any superior court of his Majesty's dominions competent to try and having jurisdiction to try criminal offenses committed at the place where such offense shall be committed.

5. *And be it further enacted*, That in case any ship or vessel in any port or place within his Majesty's dominions shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter to serve, or who shall be departing from his Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign prince, state, or potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign colony, province, or part of any province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this act, it shall be lawful for any of

the principal officers of his Majesty's customs, where any such officers of the customs shall be, and in any part of his Majesty's dominions in which there are no officers of his Majesty's customs, for any governor or persons having the chief civil command, upon information or oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board: *Provided, nevertheless,* That no principal officer, governor, or person shall act as aforesaid, upon such information upon oath as aforesaid, unless the party so informing shall not only have deposed in such information that the person or persons on board such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed or been procured to enlist or enter or serve, or is or are departing as aforesaid, for the purpose and with the intent of enlisting or entering to serve or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information upon oath the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every person and persons convicted of willfully false swearing in any such information upon oath shall be deemed guilty of and suffer the penalties on persons convicted of willful and corrupt perjury.

6. *And be it further enacted,* That if any master or other person having or taking the charge or command of any ship or vessel, in any part of the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions beyond the seas, shall knowingly and willingly take on board, or if such master or other person having the command of any such ship or vessel, or any owner or owners of any such ship or vessel, shall knowingly engage to take on board any person or persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter to serve, or who shall be departing from his Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any naval or military service contrary to the provisions of this act, such master or owner or other person as aforesaid shall forfeit and pay the sum of fifty pounds for each and every such person so taken or engaged to be taken on board; and moreover every such ship or vessel, so having on board, conveying, carrying, or transporting any such person or persons, shall and may be seized and detained by the collector, comptroller, surveyor, or other officer of the customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner or owners of such ship or vessel, shall give good and sufficient bail, by recognizance before one of his Majesty's justices of the peace, for the payment of such penalty or penalties.

7. *And be it further enacted,* That if any person, within any part of the United Kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom his Majesty shall not then be at war; or shall within the United Kingdom, or any of his Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to his Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted, and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of his Majesty's customs or excise, or any officer of his Majesty's navy, who is by law empowered to make seizures, for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of his Majesty's customs or excise and the officers of his Majesty's navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws

of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

8. *And be it further enacted*, That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions beyond the seas, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting, the warlike force of any ship or vessel of war, or cruiser, or other armed vessel which, at the time of her arrival in any port of the United Kingdom, or any of his Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

9. *And be it further enacted*, That offenses made punishable by the provisions of this act, committed out of the United Kingdom, may be prosecuted and tried in his Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, in the county of Middlesex.

10. *And be it further enacted*, That any penalty or forfeiture inflicted by this act may be prosecuted, sued for, and recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster or Dublin, or in the Court of Exchequer, or in the Court of Session in Scotland, in the name of his Majesty's attorney general for England or Ireland, or his Majesty's advocate for Scotland respectively, or in the name of any person or persons whatsoever; wherein no essoin, protection, privilege, wager of law, nor more than one imparlance shall be allowed; or in every action or suit, the person against whom judgment shall be given for any penalty or forfeiture under this act shall pay double costs of suit; and every such action or suit shall and may be brought at any time within twelve months after the offense committed, and not afterward; and one moiety of every penalty to be recovered by virtue of this act shall go and be applied to his Majesty, his heirs or successors, and the other moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

11. *And be it further enacted*, That if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for anything done in pursuance of this act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action and pleading therein, or any costs thereon in relation to any acts, matters, or things done, or that may be done by any officer of customs or excise, or by any officer of his Majesty's navy, under any act of Parliament in force on or immediately before the passing of this act, for the protection of the revenues of customs and excise, or prevention of smuggling, shall apply and be in full force in any such action or suit as shall be brought for anything done in pursuance of this act in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this act.

12. *Provided always, and be it further enacted*, That nothing in this act contained shall extend or be construed to extend to subject to any penalty any person who shall enter into the military service of any prince, state, or potentate in Asia, with leave or license, signified in the usual manner, from the governor-general in council or vice-president in council of Fort William, in Bengal, or in conformity with any orders or regulations issued or sanctioned by such governor-general or vice-president in council.

Act of Congress with notes, (extracted from Dunlop's Digest of the General Laws of the United States. Ed. 1856.)—(Vide Report pp. 4 and 115.)

CHAPTER 88.

AN ACT* in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned. [April 20, 1818.]

That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people in war, by land or by sea, against any prince, state, colony, district, or people with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

SEC. 2. That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided*, That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people, who shall transiently be within the United States, and shall, on board of any vessel of war, letter of marque, or privateer, which, at the time of its arrival within the United States, was fitted and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people,† who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

SEC. 3. That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel with intent‡ that such ship or vessel shall be employed in the service of any foreign prince or state,§ or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people** with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid, every person so

* This act re-enacts the acts of 1794, ch. 50, 1797, ch. 58, and of 1817, ch. 58, with some addition, and by adding the words "colony, district, or people." (7 Wheat., 469. *The Gran Para*.)

† The object of the laws was to put an end to the slave trade, and to prevent the introduction of slaves from foreign countries. (11 Peters, 73, *United States vs. The ship Garonne, United States vs. Skiddy*.)

‡ Slaves of Louisiana taken by their owners to France in 1835, and brought back with their own consent, is not a case within the acts. (11 Peters, 73, *United States vs. Skiddy*.)

§ The intent must be a fixed one, and not contingent, and formed within the United States, and before the vessel leaves the United States. (4 Peters, 445, 466, *United States vs. Quincy*, 3 Dal., 307, *Moodie vs. The Alfred*.)

¶ The law does not prohibit the sailing of armed vessels belonging to our citizens, out of our ports, on bond, &c., that they will not be employed to commit hostilities against powers at peace with us. (6 Peters, 466, *Johnson*, J.)

¶ The indictment charged the fitting out of the *Bolivar* with intent that she should be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata; held, that although the United Provinces were recognized by the United States, that the charge, under the innuendo, was sufficiently laid. (6 Peters, 445, 467, *United States vs. Quincy*.)

¶ An effort to fit out will satisfy the law. (6 Peters, 445-464.)

¶ The vessel was fitted out and repaired at Baltimore, and with some warlike munitions on bond given, sailed for St. Thomas, where she was fully armed and cruised under a Buenos Ayrean commission. This was held to be an attempt. (6 Peters, 445, *United States vs. Quincy*.)

¶ Either will constitute the offense. (6 Peters, 445, 464, *United States vs. Quincy*. It is not necessary to charge the fitting and arming.)

¶ The owner is liable under the act, if he authorized and superintended the fitting and arming, without being personally present.

¶ It is not essential that the fitting should have been completed. It is not necessary that even equipment of a slave voyage should have been taken on board in the port of the United States. In this case part of the equipment of the General Winder for a slaving voyage was shipped on another vessel for St. Thomas, and then transhipped to the General Winder.

¶ The particulars of the fitting out need not be set out in the indictment; they are minute acts, incapable of exact specification. 473, 475.

¶ The indictment should allege that the vessel was built, fitted, &c., within the jurisdiction of the United States, 476, 477, and "with intent to employ the vessel" in the slave trade; and alleging that "the intent" was "that the vessel should be employed in the slave trade," was not sufficient, 476. (12 Wheat., 460, *United States vs. Gooding*.)

¶ Although the arms and ammunition were cleared as cargo, and the men enlisted as for a mercantile voyage. (7 Wheat., 471, 486. *The Gran Para*.)

¶ That is, a government acknowledged by the United States. (6 Peters, 467.)

** Note, † Sec. 2.

offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of the informer, and the other half to the use of the United States.

SEC. 4. That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise or commit hostilities upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such person so offending shall be deemed guilty of high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

SEC. 5. That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel in the service of any foreign prince, or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince, or state, colony, district, or people, the same being at war with any foreign prince, or state, or of any colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars, and be imprisoned not more than one year.

SEC. 6. That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince, or state, or of any colony, district, or people with whom the United States are [at] peace, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

SEC. 7. That the district courts shall take cognizance of complaints, by whomsoever instituted, in cases of capture made within the waters of the United States, or within a marine league of the coasts or shores thereof.

SEC. 8. That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States, as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States, against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 9. That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States.

SEC. 10. That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the

same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign province or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 11. That the collectors of the customs be, and they are hereby, respectively, authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board or other circumstances shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.

SEC. 12. That the act passed on the 5th day of June, 1794, entitled "An act in addition to the act for the punishment of certain crimes against the United States," continued in force, for a limited time, by the act of the 2d of March, 1797, and perpetuated by the act passed on the 24th of April, 1800, and the act passed on the 14th day of June, 1797, entitled "An act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the act passed the 3d day of March, 1817, entitled "An act more effectually to preserve the neutral relations of the United States," be, and the same are hereby, severally repealed: *Provided, nevertheless*, That persons having heretofore offended against any of the acts aforesaid may be prosecuted, convicted, and punished as if the same were not repealed; and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

SEC. 13. That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

Case of Moodie vs. the Ship Alfred, see 3 Dallas, 307.—1 Curtis's Decisions of Supreme Court of the United States, p. 234.—(Vide Report, Page 92.)

Case of the Santissima Trinidad and the St. Andre, seized by the vessels Independencia del Sud and the Altravida, see 7 Wheaton's Report of the Supreme Court of the United States, pp. 283, 355, Ed. 1822.—(See Report p. 91.)

Case of the United States vs. John D. Quincy, see 6 Peters, pp. 445, 469, Ed. 1832.—(Vide Report page 114.)

IN THE COURT OF EXCHEQUER AT WESTMINSTER—MICHAELMAS TERM, 27TH VICTORIA.

Before the right honorable, the Lord Chief Baron Pollock, Mr. Baron Bramwell, Mr. Baron Channell, and Mr. Baron Pigott.

THE ATTORNEY GENERAL *v.* SILLEM AND OTHERS, claiming the Vessel *Alexandra*.

Argument on application for leave to move for new trial after the expiration of the first four days of term,

*Report of the arguments on the application of the attorney general for leave to move for a new trial after the first four days of term, resulting in a rule nisi to show cause why a new trial should not be had, and the arguments thereon, together with the judgment of the court.**

Counsel for the Crown: The Attorney General, Sir ROUNDELL PALMER, Knight; The Solicitor General, Sir ROBERT PORRETT COLLIER, Knight; The Queen's Advocate, Sir ROB. JOSH. PHILLIMORE, Knight, Q.C., D.C.L.; Mr. LOCKE, Q.C., M.P.; Mr. T. JONES.

Counsel for the Claimants: SIR HUGH MCCALMONT CAIRNS, Knight, Q.C.; Mr. KARS-LAKE, Q.C.; Mr. MELLISH, Q.C.; Mr. KEMPLAY.

Solicitor for the Crown: Mr. F. J. HAMEL, Solicitor for her Majesty's Customs.

Solicitors for the Claimants: Mr. E. L. ROWCLIFFE, (GREGORY, ROWCLIFFE and Co.,) London, agents for Messrs. FLETCHER and HULL, Liverpool.

TUESDAY, November 3, 1863.

LORD CHIEF BARON. Mr. Attorney General, the ordinary practice of the court is to take the peremptory paper the first thing on the second day of term, but I presume that you are in attendance on the business of her Majesty, and you are therefore entitled to pre-audience. If you have anything to move, the court will hear you.

MR. ATTORNEY GENERAL. I thank your lordship. My lord, I have come here to apply to your lordships not at present to go into any motion which will involve any lengthened argument or discussion, but I come to ask your lordships to give me a longer than the ordinary time of four days for the purpose of making, if it should become eventually necessary, a motion for a new trial in the case of the Attorney General *vs.* Sillem, which was tried before the summer assizes, before the lord chief baron, concerning the forfeiture of the ship *Alexandra*. It will be in his lordship's recollection, and indeed it is known to everybody, that upon that occasion his lordship laid down the views which he thought ought to govern the jury as for the construction of the act of Parliament commonly called the foreign enlistment act. His lordship did so in a manner which we thought was perfectly clear and intelligible to all persons who heard it. There was no difference whatever in the understanding of his lordship's ruling on the part of the counsel for the Crown, and we have no reason to suppose that it was viewed otherwise by the counsel for the claimants, or generally understood in any other sense than that in which we viewed it. At the end of the trial, and before the verdict, we proposed in the usual manner and complying with form to offer exceptions to that ruling. We were told, however, that it was not at all necessary to stand upon form. His lordship said, "I will accept any bill of exceptions you wish to tender." And accordingly, after the verdict, but not before, a note hastily written down at the time of the points or the principal points which we understood to be laid down was handed in, and then it was said by his lordship that we were not to be bound by what passed on that occasion; that time might be taken and that the thing would be settled. My lords, of course we were in hopes that there would be no difficulty at all in settling a bill of exceptions. It is a point of very great importance, and most fit to be raised solemnly by exceptions, so that it may go to the court of error, and if it should be necessary, to the last court of appeal. We are most anxious that it should be so raised and so determined, and we have no reason to doubt that the other side are equally so. But hitherto there have been difficulties in arriving at any form of exceptions which we can rely upon as certain to receive the signature of your lordship. We hope that those difficulties will be overcome. We are in communication at the present time with the counsel on the other side, who have in their possession the form of exceptions which we now propose to endeavor to tender, and we trust that an agreement may be arrived at between ourselves and the opposite counsel, or if that should not happen, that his lordship upon being applied to at chambers in the usual way will be able to settle such a form of bill of exceptions as will raise the real question to be determined in a manner which will be satisfactory to both parties and useful to the public, and we infinitely prefer—

LORD CHIEF BARON. Mr. Attorney General, I think it right to state that I myself see

*NOTE.—To render intelligible the frequent reference made by counsel to the reports of the trial, it may be observed that two copies have been printed, the one for the Crown containing an appendix and termed by counsel the larger copy, and the other for the claimants termed by counsel the smaller copy. There is no substantial difference between the two reports, the variance consisting chiefly of clerical inaccuracies for the most part rectified in the larger book.

no prospect whatever of any change in the view which I have taken as to what is my duty in signing the bill of exceptions. The correspondence between me and the late learned attorney general probably you may have seen.

MR. ATTORNEY GENERAL. Yes, my lord.

LORD CHIEF BARON. But you were not present at the whole of the trial, and, so far from my laying down the law, as the bill of exceptions tendered to me assumes, I took particular pains to avoid doing anything of the kind. I had originally, during the course of Sir Hugh Cairns's argument, undoubtedly entertained an impression (I call it no more) that all the expressions of "equipping, arming, fitting," and so on, probably meant the same thing, and were to be referred to the verbiage of an act of Parliament, as you commonly find a thing called "ship or vessel;" the statute no doubt in that case meaning precisely the same thing by the one and the other. But in the course of his address to the jury, the late attorney general mentioned a case the name of which I do not recollect. I think it is in 5th Curtis, or the 5th volume of some reports. I could refer to it, but it is not desirable now to take up the time by doing so, and that was a decision in an American court, with an appeal to the Supreme Court, where the decision below was affirmed, and it was a case where the vessel was completely prepared in every other respect, but that she was not armed. When I came to sum up I mentioned that case to the jury, commended it so far as to say that I adopted it, and left it to them, and pointed out that what formerly apparently might have been inferred from what had dropped from me in the course of the address of counsel was not what I told them was the law; and I finally left the question to them in the alternative, using the very words of the act of Parliament, "If you think that this vessel was armed or equipped or fitted out, or was intended to be armed or fitted out or equipped, then your verdict must be for the Crown; if not, for the defendant." Now, the attorney general presented to me a bill of exceptions, by which I purported to tell the jury that the vessel must be armed, and that if it was not armed there was no offense. I not only did not so tell the jury, but if you read the short-hand writer's notes which were furnished to me, I think no person can have any doubt but that I left the question as I am now stating. But, Mr. Attorney General, probably all the object which you have in view may be obtained by your moving without reference to the bill of exceptions at all. It is true that there was no point reserved at the trial, so as to give you a right of appeal in the event of the rest of this court concurring with me in the direction which I gave to the jury. But this is a matter of so much importance that I do not know whether I can pledge the court, but certainly it would be, I think, very much to be regretted, however unanimous this court might be, if we did not give you, which we have the power of doing, a right of appeal to the superior court.

MR. ATTORNEY GENERAL. I understand that your lordships have no power by the act of Parliament, unless there be a difference of opinion. I understand that you have no power at all.

LORD CHIEF BARON. Mr. Attorney General, that is not so.

MR. ATTORNEY GENERAL. No, my lord; I misunderstood what my learned friend, Mr. Jones, said to me.

LORD CHIEF BARON. We have the power of granting you an appeal, and I must say, as far as I am concerned, that however unanimous the court may be, and however strong the opinion, if you wish to have an appeal, certainly my voice would be in favor of giving you that. It would not then be a privilege, it would be an indulgence.

MR. ATTORNEY GENERAL. I am much obliged to your lordship.

LORD CHIEF BARON. The questions concerned are so important that I think we ought to do so; but I do not know whether the other members of the court take the same view.

MR. BARON BRAMWELL. I understand the difficulty to be this, that the common-law procedure act does not apply to a proceeding of this nature.

MR. ATTORNEY GENERAL. Yes, my lord.

MR. BARON BRAMWELL. This act of Parliament, which, to a certain extent, assimilated Crown proceedings to civil actions, does not comprehend the case of an appeal from making absolute or discharging a rule.

MR. ATTORNEY GENERAL. That is what we apprehend, my lord.

MR. BARON BRAMWELL. Whether that is so or not is open to some doubt.

MR. ATTORNEY GENERAL. My learned friend, Mr. Jones, has considered that point carefully, (I cannot say that I have,) and he is very strongly under that apprehension that the act of Parliament does not reach the case.

MR. BARON BRAMWELL. There has been a case argued here, the case of a writ of intrusion by the Crown, and the point has been slightly considered, but not at all argued at the bar, whether, if there was a difference of opinion upon the bench, such as would entitle a dissatisfied party in an ordinary civil action to appeal, the words of the act are large enough to reach such a case.

MR. ATTORNEY GENERAL. Of course it would be extremely important that that point should be carefully considered before the suggestion, which has been so kindly thrown

out, was acted upon. No doubt I fully understand that your lordships would be quite willing, if you had the power, so to exercise it.

MR. BARON CHANNELL. Yes.

MR. ATTORNEY GENERAL. At the same time, if your lordships have not the power, of course no amount of good-will on your part could enable you to do so.

MR. BARON BRAMWELL. Mr. Attorney General, what has occurred to me as a difficulty in the course which you suggest is this. You are apprehensive that the Lord Chief Baron may decline to sign a bill of exceptions in the form in which you think he ought to sign it. But then if you come and move for a new trial on the ground that he directed the jury in conformity with your notion of his direction, and he reports to us that he did not so direct, of course we should grant no rule for a new trial on that ground; so that there seems to me to be this sort of difficulty, that, if my lord will not sign a bill of exceptions in the form in which you require it, on the ground that he did so direct the jury, neither should we entertain an application for a new trial on that ground.

MR. ATTORNEY GENERAL. I do not know, my lords, but we have the *littera scripta* here, and I was not aware that even a learned judge was able to interpret his own words upon a question of new trial in a sense different from their plain meaning.

MR. BARON BRAMWELL. According to my experience (and important as this case may be I do not think that we ought to deviate from it) the invariable practice is to take the report of the learned judge as to the direction which he gave to the jury.

MR. ATTORNEY GENERAL. I should be bound by the practice, no doubt.

LORD CHIEF BARON. I have read the short-hand writer's notes.

MR. ATTORNEY GENERAL. So have I, my lord.

LORD CHIEF BARON. The inquiry with respect to the direction to the jury is not whether something was said in the course of the trial from which somebody may infer something else, but what was the point left to the jury? Now, this is the summing up. After stating some of the evidence, I think that of a captain in the royal navy, I go on thus: "The question is, was there any intention that in the port of Liverpool, or in any other port, she should be, in the language of the act of Parliament, either equipped, furnished, fitted out, or armed with the intention of taking part in any contest."

MR. ATTORNEY GENERAL. Yes, my lord; but your lordship had told the jury before what those words meant, and had placed your interpretation upon the act of Parliament.

LORD CHIEF BARON. Mr. Attorney General, I must entirely deny that; unfortunately you were not here the whole of the time.

MR. ATTORNEY GENERAL. I was here during the whole of the summing-up, my lord—every word of it.

LORD CHIEF BARON. That may be. "That there was a knowledge that very likely she would be so applied there can be no doubt, as there is when persons send powder. I take it for granted that there are agents on both sides, one openly buying every munition of war and openly carrying it away, the others buying wherever they can." "If you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. But if you think the object really was to build a ship in obedience to an order, and in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the foreign enlistment act has not been in any degree broken. I leave you to find your verdict, unless you wish me to read the evidence over to you." They did not wish to hear the evidence, and they found a verdict for the defendants.

MR. ATTORNEY GENERAL. Of course your lordship is very well aware that that is the conclusion of a long summing-up, of which we have a note, and your lordship said, after we had made the observations which we did subsequently to the verdict: "Mr. Attorney General, I will not bind you to what passes on the present occasion; there cannot be any doubt now. I cannot alter the thing, and I have no doubt that you have a very accurate note of what I have said."

LORD CHIEF BARON. Yes.

MR. ATTORNEY GENERAL. And immediately before that, my lord, I said, and your lordship made no observation to the contrary: "Your lordship said the words were the same—that every one of the words required a warlike armament at Liverpool—that is the point."

LORD CHIEF BARON. That, Mr. Attorney General, you will find was distinctly explained in the course of the summing-up. I will read you the passage.

MR. ATTORNEY GENERAL. I have the passage, my lord, and have read it.

LORD CHIEF BARON. It was calling the jury's attention to the finding in the case to which I have alluded, and adopting it as the law for the present, though I must say that personally I do not agree with it, and if it had to be re-argued in the courts of this country it would not be found to be correct.

MR. ATTORNEY GENERAL. I will, with your lordship's permission, refer to the passage which you mention.

LORD CHIEF BARON. The question now is, what is the course which we can take consistently with the rules of the court.

MR. ATTORNEY GENERAL. That is so, no doubt. My lord, we are most anxious, and I believe that the other side are equally anxious, to raise the question by a bill of exceptions.

LORD CHIEF BARON. I believe that the rule here is this: if you desire to move for a new trial upon any other matter than a point of law, then you have the power to move, as, for instance, if you wish to move for a new trial on the ground that the jury ought not to have found the verdict which they did find, the court, I think, would entertain that application; but if you wish to reserve to yourself the power of moving upon a point of law, having tendered a bill of exceptions upon some other point of law, or the same, then I think that the court probably would not yield to that application.

MR. ATTORNEY GENERAL. My lord, I think that that would be quite against the practice of the court. The application which I wished to make simply was, that my time for moving might be enlarged. I believe that on both sides we are under the same impression, that something was ruled concerning the interpretation of the statute, and that the jury found their verdict under the influence of such a direction.

LORD CHIEF BARON. I think that nothing of the sort occurred.

MR. ATTORNEY GENERAL. Then we are both of course under a misapprehension; but being both under that misapprehension, and the point supposed to be ruled being one which is on both sides considered of the utmost importance, I believe that it is the common wish of both sides to raise that point, if it be possible, by bill of exceptions, and we hope to attend your lordship in the usual course, in order to have such a bill of exceptions settled. If that should be impossible, then of course I shall move, but in the meantime, hoping that it may not be impossible, my application was that my time for moving might be enlarged beyond the first four days, so that if we cannot obtain your lordship's signature to a bill of exceptions raising the question, then I may move.

MR. BARON BRAMWELL. It is a very technical matter. We have held that we have not the power to allow a motion for a new trial to be made after the four days in a civil case by the express words of the act of Parliament. The way in which that has been what one may call evaded has been by permitting the motion to be made and adjourned. Then there is this difficulty; that if you move for a new trial, having tendered a bill of exceptions, you must give it up.

MR. ATTORNEY GENERAL. That I am not prepared to do.

MR. BARON BRAMWELL. I do not know whether you follow the technical difficulties in your way.

MR. ATTORNEY GENERAL. Perfectly, my lord.

MR. BARON BRAMWELL. I cannot help repeating what I said to you, that supposing you fail in procuring my lord's signature to the bill of exceptions on the ground which has been alluded to, you will equally fail in getting a rule for a new trial upon the same ground.

MR. ATTORNEY GENERAL. Then at all events we should have the decision of the court, that nothing was ruled upon the late occasion.

MR. BARON BRAMWELL. You would only have the decision of the court to this effect, that my lord had so reported, and that they adopted that report.

MR. BARON CHANNELL. Would it suit your purpose, Mr. Attorney General, to make a motion now, and have it adjourned upon the understanding that it is not to be further argued unless the bill of exceptions is not signed?

LORD CHIEF BARON. Before you can make a motion at all the bill of exceptions must be disposed of, as it is upon a point of law.

MR. ATTORNEY GENERAL. I think that perhaps my best course, after what has fallen from your lordships, is this: this is only the second day of term, I will come here again on the fourth day of term.

MR. BARON BRAMWELL. I was just going to suggest that.

MR. ATTORNEY GENERAL. In the meantime we will examine the point which your lordship has been so good as to suggest, and see whether we can possibly bring a case of this description within the terms of the common law procedure act.

WEDNESDAY, November 4, 1863.

Motion to apply the common law procedure acts, 1852 and 1854, and the rules of pleading and practice, to the revenue side of the court.

MR. ATTORNEY GENERAL. My lord, I attend your lordships this morning in consequence of what your lordship was so good as to throw out yesterday, which has received our careful attention since, and we find that, as the law now stands, an appeal from any order refusing a motion for a new trial, or making a rule absolute in a case of this description upon the revenue side, could not be granted; but that it is in your lordship's power, if you should think fit to exercise it by an act to be done this day, to apply the common law procedure act so that an appeal would be competent, because I find, my lords, that by the 26th section you have full power.

LORD CHIEF BARON. Allow me to take a note of the reference; what is the statute?

MR. ATTORNEY GENERAL. The 22 and 23 Vict., cap. 21. sect. 26, The Queen's remem-

brancer's act; and your lordships will excuse my appearing to-day, because if I had not done so it would have been too late.

LORD CHIEF BARON. It is your right to appear to-day or any day that you think the interests of the Crown require it.

MR. ATTORNEY GENERAL. For this purpose, my lord, no other day would have done, because this is the last day on which it would be possible for your lordships to make such an order which would be available with respect to the case in question.

MR. BARON CHANNELL. The defect is not in the act of Parliament, but in the rules; have we power to make a rule?

MR. ATTORNEY GENERAL. Yes, my lord, this is the clause: "It shall be lawful for the Lord Chief Baron, and two or more barons of the Court of Exchequer, from time to time to make all such rules and orders as to the process, practice, and mode of pleading on the revenue side of the court," and as to some other things "as may seem to them necessary and proper, and also from time to time by any such rule or order to extend, apply, or adapt any of the provisions of the common law procedure act, 1852, and the common law procedure act, 1854, and any of the rules of pleading and practice on the plea side of the said court to the revenue side of the said court, as may seem to them expedient for making the process, practice, and mode of pleading on the revenue side of the said court as nearly as may be uniform with the process, practice, and mode of pleading on the plea side of such court." Your lordships recollect the clause in the common law procedure act, which I need not therefore refer to, but I may mention that when under that act certain rules were made on the 22d day of June, 1860, not however extending *quoad hoc*, the last of those rules was in these terms: "That the foregoing rules shall come into operation and take effect on Wednesday the 24th day of October, 1860," the date of the order being the 22d of June, "and with respect to any matter of proceeding then pending, these rules may, so far as they are applicable to any step or proceeding to be thereafter taken, be adopted and applied accordingly." There is nothing in the act which says that any interval shall elapse between the making of the order and the time when it is to take effect, and I believe, my lords, that this is the only case in the same circumstances, and if, therefore, it should appear to your lordships in your own discretion to be right to make such an order to-day, it would, in my humble judgment, govern the case in hand.

LORD CHIEF BARON. Why could it not be made to-morrow? I admit that I do not see why it should not be made to-morrow.

MR. ATTORNEY GENERAL. Your lordship may be quite right.

LORD CHIEF BARON. Or indeed at any time.

MR. ATTORNEY GENERAL. What had occurred to me was this, that if the motion were made to-morrow, it might be doubted whether the rule would have a retrospective effect upon a motion which had been made before.

MR. BARON BRAMWELL. What I presume my lord means is, why could we not make the order the first thing to-morrow, and you immediately move.

MR. ATTORNEY GENERAL. Yes, that, my lord, would be quite the same thing.

LORD CHIEF BARON. I am rather inclined to think, Mr. Attorney General, that we might make the rule at any time.

MR. ATTORNEY GENERAL. It is not for me to say what is in your lordships' power.

LORD CHIEF BARON. Inasmuch as it is granted to the court to make all such rules as may seem to them necessary and proper, I apprehend that we might make the rule at any time, and make it retrospective. However, it is safer perhaps to avoid that.

MR. ATTORNEY GENERAL. I think that it would be safer, my lord. If your lordships thought fit to make the rule, I think it would be safer not to raise that question as to the manner of making it.

[Their lordships consulted together.]

MR. BARON BRAMWELL. Mr. Attorney General, those rules of which you speak were originally prepared in the office of the Queen's remembrancer, and I had a good deal to do with the settlement of them. The fact is that the omission, or rather the non-insertion of a rule giving a power of appeal in this case, was intentional on the part of those who prepared them. It was thought inexpedient that there should be such a power. But I may mention that I was not aware that the rules had not made that provision. It did not occur to me when I went over them, and nobody called my attention to it, or else, as at present advised, I should have thought that what was a good rule in an ordinary civil case would be an equally good rule in this case; I mean in a revenue case; I mean in cases under the act, so that it must not be supposed, if upon consideration we should insert such a rule as that, that we are on the spur of the moment reversing anything which has been deliberately done by the court. If we should come to the conclusion that such a rule as that ought to be made, it will be upon our attention being called to the matter for the first time. Whether I ought to have noticed it when the rules were under my consideration is another matter, but I certainly did not; the matter did not occur to me at all, but the omission was deliberate on the part of those who originally prepared the rules.

MR. ATTORNEY GENERAL. Perhaps your lordships would permit me to say that of

course I have not mentioned the matter this morning without endeavoring to discharge the duty of considering whether any public inconvenience might arise in other cases from making such a rule, and my strong impression is that, both for the Crown and for the subject, it would be desirable that there should be such a rule.

LORD CHIEF BARON. I quite agree with you in that respect, and on the present occasion I should have concurred in any mode whatever short of a violation of principle which would have given effect to a desire to appeal. I must say after the experience which I have had for some time, sitting in this court, that I own I see no reason why there should not be a power of appeal in revenue cases, as well as in any other case; there ought to be, and at all events there ought to be a power in the court to grant an appeal if it is applied for, and if the court thinks that is a fit case for an appeal; at least there ought to be that power in every case.

MR. BARON PIGOTT. I confess that I very strongly concur in that. It is very much in the spirit of modern legislation which has put petitions of right on the foot of ordinary actions and given costs to the subject against the Crown; I think it very extraordinary that there should not be appeals in these cases as well as in civil actions.

LORD CHIEF BARON. The rules were framed by the Queen's remembrancer in their present shape, whether with the concurrence of the law officers or not I do not know.

MR. BARON BRAMWELL. The solicitor for the revenue.

LORD CHIEF BARON. I presume that some person representing the government in matters of revenue was a party to the arrangement.

MR. BARON BRAMWELL. They were, and in truth it was their apprehending great danger from this power of appeal which caused the rule not to be inserted.

LORD CHIEF BARON. Mr. Attorney General, the result of your application this morning I take to be this. The court entirely concur with you in the view of what ought to be, but it would be better for the court to adjourn a little earlier than usual to-day, for the purpose of seeing whether the rule ought to be made. It certainly ought not to be done in a hurry; as my brother Bramwell has said, "on the spur of the moment." We shall consider it, and I own I anticipate we shall make that alteration. We had better let you know whether such an alteration may be made. If it be made you will be here to-morrow morning I presume to move simply for a new trial on all the grounds that may occur to you.

MR. ATTORNEY GENERAL. Yes, my lord, if your lordships make such a rule there will be no doubt that we shall do so.

LORD CHIEF BARON. I think that that would be the better course to adopt, because it would leave open to you every objection which may reasonably be presented as to what passed at the trial, and as to what might have misled the jury, although there was no intention to mislead them, and possibly even no error, though what was said may not be free from the objection that it might have been made more clear; all that I think ought to be open to you. That would not be open upon a bill of exceptions.

MR. ATTORNEY GENERAL. I am much obliged to your lordship, and if your lordships should make such a rule there is no doubt that that is the course which we shall take; if not, of course we shall consider as far as we have time and opportunity what course to pursue.

LORD CHIEF BARON. Unfortunately I was in communication with the attorney general only, and not with any other law officer of the Crown I mean during the last circuit when we were discussing the case. It had occurred to me that if the attorney general had not resigned, and I own that I had some intention of suggesting to him the propriety of abandoning the bill of exceptions, and moving upon any point which he thought presented a fair subject for a motion. Now that the impediment which has been supposed to exist may be removed in the course of the day, and this proceeding being placed upon the same footing as any other proceeding in the court, undoubtedly a motion for a new trial with an appeal is a far better thing than a bill of exceptions.

MR. ATTORNEY GENERAL. O yes.

LORD CHIEF BARON. A bill of exceptions is coupled with various old technicalities which perhaps under a better and more enlightened system may be got rid of; I do not know whether the better course would not be to make an application for a new trial always the subject of an appeal, at all events if the court think fit, and probably this may be the means of getting rid altogether of a very old and I think not a very convenient mode of correcting the errors of a judge in the course of a trial.

The court then made the following rules:

COURT OF EXCHEQUER—REVENUE SIDE.

In pursuance of the provisions contained in the 26th section of the 22 and 23 Vict., cap. 21, intituled An act to regulate the office of Queen's remembrancer and to amend the practice and procedure on the revenue side of the Court of Exchequer, "It is ordered that the following provisions of the common law procedure act, 1854, be extended, applied, and adapted to the revenue side of the Court of Exchequer; and

also that the following rules as to giving bail in cases of appeal shall be in force on the revenue side of the Court of Exchequer :

1. "In all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial; if the rule to show cause be refused or granted and then discharged or made absolute, the party decided against may appeal.

2. "In all cases of motions for a new trial upon the ground that the judge has not ruled according to law, if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal provided any one of the judges dissent from the rule being refused, or when granted being discharged or made absolute, as the case may be, or provided the court in its discretion think fit that an appeal should be allowed, provided that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence or otherwise, no such appeal shall be allowed.

3. "The Court of Error, the Exchequer Chamber, and the House of Lords shall be courts of appeal for this purpose.

4. "No appeal shall be allowed unless notice thereof be given in writing to the opposite party or his attorney and to the Queen's remembrancer within four days after the decision complained of, or such further time as may be allowed by the court or a judge.

5. "The appeal hereinbefore mentioned shall be upon a case to be stated by the parties, (and in case of difference to be settled by the court or a judge of the court appealed from) in which case shall be set forth so much of the pleadings evidence and the ruling or judgment objected to as may be necessary to raise the question for the decision of the court of appeal.

6. "When the appeal is from the refusal of the court below to grant a rule to show cause, and the court of appeal grant such rule, such rule shall be argued and disposed of in the court of appeal.

7. "The court of appeal shall give such judgment as ought to have been given in the court below, and all such further proceeding may be taken thereupon as if the judgment had been given by the court in which the record originated.

8. "The court of appeal shall have power to adjudge payment of costs and to order restitution, and they shall have the same powers as the court of error in respect of awarding process, and otherwise.

9. "Upon an award of a trial *de novo* by the court, or by the court of error upon matter appearing upon record, error may at once be brought; and if the judgment in such or any other case be affirmed in error it shall be lawful for the court of error to adjudge costs to the defendant in error.

10. "When a new trial is granted on the ground that the verdict was against evidence, the costs of the first trial shall abide the event unless the court shall otherwise order.

11. "Upon motions founded upon affidavits it shall be lawful for either party, with leave of the court or a judge, to make affidavits in answer to the affidavits of the opposite party upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.

12. "Notice of an appeal shall be a stay of execution, provided that within eight days after the decision complained of, or before execution delivered to the sheriff, bail to pay the sum recovered and costs, or to pay costs when adjudged, be given in like manner and to the same amount as bail in error is required to be given under the rules of this court, made on the 22d day of June, 1860, or as near thereto as may be applicable, provided that such bail shall not be necessary to stay execution in cases where the appellant is the Crown, the attorney general on behalf of the Crown, or the Prince of Wales, or the Duke of Cornwall for the time being.

"The foregoing rules shall come into operation and take effect forthwith, and apply to every cause, matter, and proceeding now pending.

"FRED POLLOCK.
"G. BRAMWELL.
"W. F. CHANNELL.
"G. PIGOTT.

"Dated the 4th day of November, in the year of our Lord 1863."

THURSDAY, November 5, 1863.

Motion for rule to show cause why there should not be a new trial.

MR. ATTORNEY GENERAL. My lords, in the case of the Attorney General vs. Sillem, which was an information arising out of the seizure of the ship *Alexandra* upon the 5th of April last by the Crown for a violation of the foreign enlistment act, I have humbly to move your lordships for a rule to show cause why there should not be a new trial, on the ground of misdirection by the learned judge, and also upon the ground that the verdict was against the evidence.

MR. BARON BRAMWELL. Mr. Attorney General, in order that there be no mistake, let

it be clearly understood that you move on the ground of misdirection, and that the bill of exceptions is abandoned.

MR. ATTORNEY GENERAL. Yes, my lord.

MR. BARON BRAMWELL. Let it further be understood, if you please, that we must take my lord's report of what he directed, and act upon that.

MR. ATTORNEY GENERAL. That I understood also.

MR. BARON BRAMWELL. And further, supposing that upon the ground of the verdict being unsatisfactory for any reason, we in our discretion grant or refuse the rule, no appeal will be from it under the rules which we announced yesterday.

MR. ATTORNEY GENERAL. Unless your lordships think fit to grant one.

MR. BARON BRAMWELL. Nay, there is no appeal except upon a matter of law. If we should be of opinion that there was no misdirection, but that nevertheless the jury may have acted upon some wrong opinion, and grant a new trial upon that ground, it would not be competent to the defendant to appeal. On the other hand, if we should be of a different opinion, and refuse the rule, and you should desire to take the opinion of the court of error upon that question, it would not be open to you to do so. I wish to state for my own part, and I believe I may say for my lord and my brethren, that it is desirable that those three matters should be clearly understood, namely, that you abandon your bill of exceptions, that we take my lord's report of the direction, and there is no appeal from our decision by either side, except upon a matter of law.

MR. ATTORNEY GENERAL. I am entirely bound by that. Of course, when I speak of misdirection, your lordships will understand me to include in that both of these propositions, which I perceive from the books have been grounds upon which new trials have been granted in various cases, namely, the omission to give a proper direction, and also such a direction which in one sense might have been justified, but which, as it was given, had a tendency to mislead, and my have misled, the jury.

Now, my lords, I will first state to your lordships the way in which the question arose. The information was filed by the Crown after the seizure which had taken place in the yard of Messrs. Miller and Sons, or Mr. Miller, of Liverpool, who is a ship-builder there; the information was filed upon the 25th of May. There were ninety-eight counts in that information, the great number being rendered necessary by the rather complicated structure of the clause in the act of Parliament upon which it was founded. In substance it charged the persons whom I am going to mention, and other persons unknown, with various acts against the seventh section of the foreign enlistment act. The persons, my lord, so charged upon the face of the record were these, the members of the firm of Miller and Sons, or what was supposed to be that firm, (I believe it turned out and was stated in the evidence that Mr. Miller carried on business alone,) who were the builders of the vessel, and in whose yard she was when she was seized—in whose actual possession was she when she was seized, the firm of Fawcett and Company, who are, I believe, manufacturers of machinery at Liverpool, who came forward as the claimants, and said that the vessel was theirs, the firm of Fraser, Trenholm and Company, whom we proved, as your lordships will find by the evidence, to be the general agents for the business of the Confederate States (so called) of America at Liverpool, a person named James Bulloch, or Captain Bulloch, who was a special agent of those States at Liverpool for their belligerent business, and a person named Tessier, also employed in that business. Those two individuals, Bulloch and Tessier, and those three firms, Miller and Sons, Fawcett and Company, and Fraser, Trenholm and Company, with other persons unknown, were all charged in every count of the information with the different acts in violation of the foreign enlistment act which were alleged.

Now the separate counts, my lords, were founded upon the language of the seventh section, to which I will just shortly refer your lordships at the outset, not offering any argument upon it at present, but merely that its structure should be observed. The seventh section of the foreign enlistment act is this—"If any person within any part of the United Kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm" in the disjunctive.

LORD CHIEF BARON. Have you an abstract of the information?

MR. ATTORNEY GENERAL. I have, my lord; but I am afraid that it is in a shape not very ready accessible to your lordship.

LORD CHIEF BARON. It will answer my purpose; there was one handed up to me, which I have somehow mislaid.

MR. BARON BRAMWELL. I should think one might take it for granted that whatever offence was in the act was included in the information, there being ninety-eight counts.

MR. ATTORNEY GENERAL. Yes, I think your lordships may take that for granted.

LORD CHIEF BARON. I should like to have a copy of the abstract.

MR. ATTORNEY GENERAL. I am afraid that I have not a copy of any abstract.

LORD CHIEF BARON. I could take one of the solicitor general's.

MR. SOLICITOR GENERAL. I have not a separate abstract.

LORD CHIEF BARON. Has any gentleman one.

MR. ATTORNEY GENERAL. I think that probably this will do, my lord. My learned

friend Mr. Jones has one. (The same was handed up to his lordship.) My lords, perhaps without going into too much detail, I may state in a few words that you will find in the clause of the act these different heads, which were all taken by the information—first equipping, then furnishing, then fitting out; we did not charge arming.

LORD CHIEF BARON. That is the very point which I wanted to call attention to.

MR. ATTORNEY GENERAL. We did not charge arming.

LORD CHIEF BARON. I was not quite certain, but my recollection was that arming was not charged at all in the information.

MR. ATTORNEY GENERAL. No.

LORD CHIEF BARON. Nothing was charged but equipping, fitting, and furnishing.

MR. ATTORNEY GENERAL. Equipping, furnishing, and fitting out were charged.

MR. BARON CHANNELL. Each separately charged?

MR. ATTORNEY GENERAL. Each separately charged. Then, my lords, attempting or endeavoring to equip, attempting or endeavoring to furnish, attempting or endeavoring to fit out, were also each separately charged; then procuring in like manner, then knowingly aiding, assisting, or being concerned in like manner, each of those in the disjunctive being made a separate offense by the statute. And, my lords, I ask particular attention to this, because we humbly think that the learned judge at the trial entirely overlooked the existence in the act of Parliament of provisions against attempting, or endeavoring, or procuring, or knowingly aiding, assisting, and so on, and addressed, if not his mind, at all events his observations, entirely to the notion of a complete equipping, furnishing, or fitting out in the sense which his lordship considered that those words ought to bear. Of course we charge in each case that these acts were done with the intent mentioned in the statute, which I apprehend will be found by your lordships to be the gist of the offense, the prohibited intent, which is this "with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising, or assuming to exercise, any powers of government in or over any foreign state, colony, province, or part of any province or people;" the words follow, "as a transport or store-ship." There is no reason to suppose that this vessel fell within these words, "or with intent to cruise or commit hostilities against any prince, state, or potentate, &c., with whom his Majesty shall not then be at war." That was the charge made by the information, and, my lords, it was met by a claim put in on behalf of Messrs. Fawcett, Preston and Company, the engineers whom I have mentioned at Liverpool, who traversed generally the whole of the information, supporting their *locus standi* in the manner which the customs consolidation act provides for. The act is the 16 and 17 Victoria, cap. 107, section 309, which provides this: "That no claim nor appearance shall be permitted to be entered to any information filed for the forfeiture of any ship or goods seized for any cause of forfeiture and returned into any court, unless such claim or appearance be made by or in the true and real name or names of the owner or proprietor of such ship or goods, describing the place of residence and the business or profession of such owner or proprietor; and if such person shall reside at London, Edinburgh, or Dublin, or within the liberties thereof, oath shall be made by him before one of the judges of the court into which the said ship or goods are returned, or in which such information is filed, that the said ship, boat, or goods was or were his property at the time of the seizure; but if such person shall reside elsewhere," (which was this case, for in this case the claimants resided at Liverpool,) "then oath shall be made by the attorney by whom such claim or appearance shall be entered, that he has full authority from such owner to enter the same, and that to the best of his knowledge and belief such ship or goods were at the time of the seizure thereof the *bona fide* property of the person in whose name such claim or appearance is entered;" so that, to give a *locus standi* under the statute, and to guard against merely fictitious claims by persons having no interest whatever which can be *bona fide* put forward or alleged. In this case an affidavit of the attorney was required, and was made—that he believed that at the time of the seizure these gentlemen were the *bona fide* owners. Of course it was only an affidavit to secure a *locus standi* in *curia*; it would not for any other purpose be evidence as to the circumstances, if they should become material, connected with the ownership.

My lords, I now come to the evidence which was given at the trial, and I think it will be convenient, having mentioned the grounds on which I move, that I should invert the order of opening the case, and should state to your lordships the effect of the evidence, applying it to the act of Parliament in my own way, so as in the first instance to support that ground of my motion which rests on the verdict being against the evidence, and I will afterwards come to the direction of the learned judge. I think your lordships will be of opinion, when you hear that direction, that the jury never had any opportunity whatever of giving a verdict upon the effect of the evidence, in reference to that view of the act of Parliament upon which the Crown proceeded; it was, in fact, not left to them at all; it was left to them in a totally different way, so as to preclude the exercise of judgment by them upon what we regard as the true and the material question. I am now going to tell your lordships what the evidence was.

Now, the clause in the act of Parliament substantially divides itself into two points namely, that there must have been a furnishing, fitting out, or arming, or an attempt or an aiding, and in this case I should prefer taking my stand upon the words "attempt or endeavor" and "aid" and so on, because the thing was not actually completed. That being so, the evidence of course will be found to be addressed to these two material points: first, the existence of such an attempt or endeavor, and secondly, the intent and the purpose with which it was going on, those are the two things. If there was an attempt or endeavor to do it with the prohibited intent, the statute was violated. The evidence, therefore, of necessity had to be addressed to those two subjects; and I will now bring under your lordships' notice, as concisely as I am able, the material portions of the evidence bearing upon those two points, and your lordships will recollect, while I do so, that it was uncontradicted evidence—I mean that no evidence whatever was called upon the other side; this evidence, therefore, was the only evidence upon which the jury had to form their opinion.

Now I will first of all take the evidence as to the vessel, and her condition as to preparation and equipments at the time when she was seized, and afterward the evidence as to the intent. We will take the first head first—the evidence as to the condition, character, and state of the vessel, and preparations and equipments. Now it appeared from the evidence of the custom-house officer, Mr. Morgan, who had charge of the vessel, and who seized her, that she was launched in March, that she was seized upon the 5th of April, that at the time of the seizure she was incomplete, but that she had three masts on, with lightning conductors, and portions of her machinery and other fittings actually on board, and other portions in progress. Now with regard to her character and the objects and purposes for which she was constructed and built and being fitted out, we have evidence which I will give your lordships, as far as is necessary, in detail; but I will give the effect of it first in a few words—that she was built as and for a gunboat; that she had bulwarks and a rudder adapted only and peculiarly fit for purposes of war; that she was certainly unfit for any mercantile purpose whatever, though she might possibly have been used for a yacht; that although she had at the time when she was seized no fittings actually placed upon her to enable her to receive guns, yet it wanted only work which could be done at any time, and with the greatest facility, to adapt her to receive two or three pivot guns, which would be the proper number for her, which would sweep over her bulwarks and make her serviceable as a gunboat, for which she was meant. So much with regard to her character. Then with regard to the fittings—

LORD CHIEF BARON. Will you allow me to call your attention to what a captain in the royal navy said of her?

MR. ATTORNEY GENERAL. I am going to give it to your lordships in detail.

LORD CHIEF BARON. He said, "She is without any of those appurtenances which indicate an intention of guns being put on board."

MR. ATTORNEY GENERAL. I have already said so, my lord; but he also said, as I shall show by the evidence immediately, that it could be done at any moment of time, and therefore, she being seized when incomplete, of course not everything would be done, and probably those things would be left to the last which were most unequivocal with regard to the determination of her character and her purposes. I wish your lordships to see what it was that was done, what the evidence did prove upon that subject. I am going to mention one thing more. All that I have hitherto said connects itself with the structure of the vessel; but then there was further evidence going to what I apprehend is in the strictest and most appropriate sense fitting, furnishing, and equipment, as distinguished from construction, namely, evidence as to the machinery, the engines, the boiler, and other things of that description constituting part of the furniture of the vessel, thereby to enable her to go to sea, which were either actually on board or actively in progress at the time. There was also further evidence as to certain hammock nettings and stanchions, of which your lordships shall have the detail; and there was evidence, not, perhaps, so directly and unequivocally connected with the vessel, as to the preparation of gun-carriages and guns for the ship.

I have told your lordships the effect, generally, of the evidence, and I am now going to give you some of the details of it as far as is necessary. I will, first of all, take the evidence of Mr. Barnes, an engine driver, which, my lords, is at pages 39 and 40.

LORD CHIEF BARON. Of what?

MR. ATTORNEY GENERAL. Of the print from the short-hand writers' notes which I hold in my hand of the evidence.

LORD CHIEF BARON. Which we have not a copy of at all. Probably you will have the kindness to furnish it; it is not so necessary for me because I have my notes.

MR. ATTORNEY GENERAL. It is from the short-hand writers' notes, my lord.

LORD CHIEF BARON. I have never had that at all for any purpose.

MR. ATTORNEY GENERAL. I am sorry your lordship should not have it in your hand while I have it.

LORD CHIEF BARON. I certainly now see it for the first time. I have had nothing

furnished to me but a copy of half of Sir Hugh Cairns's speech, the reply of the attorney general, and my own summing up.

The QUEEN'S ADVOCATE. I will hand up my own copy to your lordship.

LORD CHIEF BARON. It is not for myself that I want it, because I have my own original notes, to which I shall adhere; but it would be desirable that my learned brothers should each of them have a copy.

MR. ATTORNEY GENERAL. My lord, I am about to read from a book which has been printed by my opponents; it is their corrected copy of the short-hand notes, which I prefer reading to reading ours, which does not, of course, differ from it; but there are some passages which may have been corrected in some way by them, and I prefer taking their copy.

LORD CHIEF BARON. If you have the benefit of a printed book I think you should at least give my learned brothers the benefit of it, that they may have the same advantage.

MR. ATTORNEY GENERAL. That, my lord, is the same book as the one which I am about to read from, (a copy being handed up to the bench.)

LORD CHIEF BARON. Have you not the means of giving a copy to each of the court?

MR. ATTORNEY GENERAL. I wish, my lord, that we had; but with some difficulty as to identifying the paging, which I dare say is not very great, (I dare say my learned friends who are with me will follow me,) the other book, which is our copy, may be used in the absence of a sufficiency of our opponents' copies.

MR. BARON PIGOTT. Mr. Attorney General, we had better not take your copy, which is turned down.

MR. ATTORNEY GENERAL. I rather intended to use myself the book which was furnished to me on the other side; it is their copy.

LORD CHIEF BARON. Have you no spare copies of your own edition?

MR. ATTORNEY GENERAL. Yes, my lord, that is our own.

MR. SOLICITOR GENERAL. We have sent for one or two copies, my lord, and they will be here.

MR. ATTORNEY GENERAL. This is the evidence of Barnes; these are short passages. I am not going to trouble your lordships with a needless detail. He was, my lords, an engine driver in Messrs. Miller's employment, and he states in his evidence that he had been concerned in the yard in the building of three gun-boats, one called the Oreto, of which I shall say nothing, and two called the Penguin and the Steady, which were built for the English government.

MR. BARON CHANNELL. We understand you that having given us, as you say, your statement as to the general effect of the evidence, you are now going to analyze the evidence upon the one point first?

MR. ATTORNEY GENERAL. Yes, my lord.

MR. BARON CHANNELL. And you will afterward take the other evidence as it supports the other points which you make?

MR. ATTORNEY GENERAL. Just so. He speaks, my lord, of having in the yard of Messrs. Miller been concerned as their servant in the building of three gun-boats, two of which were built for the English government, called the Penguin and the Steady, and the third was called the Oreto, a boat of which I will say nothing, though most people have heard of her. At the bottom of my page 39 he is asked this—

The QUEEN'S ADVOCATE. It is page 37* in the other copy, (the official copy.)

MR. ATTORNEY GENERAL. "Do you recollect a screw steamer called the Alexandra being built there?—Yes," he frequently went over her. "What is she like?—She is like the other gun-boats, only smaller. Is she like the Oreto?—Yes, she is like her, only smaller. Like the Oreto, the Penguin, and the Steady, only smaller?—Yes, only smaller." That is what Mr. Barnes said at page 39 and at page 40.

MR. SOLICITOR GENERAL. I have found another copy of the larger book; it is the same as Mr. Baron Pigott has, I think. (The same was handed up to their lordships.)

MR. ATTORNEY GENERAL. I do not think I need trouble your lordships with anything else which Barnes said.

Then comes Hodgson, a packer in the service of the claimants, Messrs. Fawcett and Company, who were making the machinery, and in page 54 of the smaller book, and in page 51† of the other, he proves this, that he received orders in the yard of the claimants, Messrs. Fawcett and Company, to take the machinery, clanches, and bolts, which he identifies as made for this vessel, to the gun-boat. This was his evidence upon the subject; he is asked, "Did he," (that is, Mr. Speers, the manager or foreman of Messrs. Fawcett and Company's works,) "give you any orders?—Yes. What were the orders?—To see if the things were ready, and to take them if they were ready, as the men were waiting for them in the yard. To take them where?—To take them up to Mr. Miller's yard, or to the boat. Or to where?—To the gun-boat. Those," he adds, "were the words of Mr. Speers, as far as I remember. SIR HUGH CAIRNS.—As far as you recollect?—Yes." Then he is asked, "Where did you take them in consequence of that order?—I took them to the yard, and left them in the stores of Miller's yard. What became of them afterwards?—The men would be waiting to use them when I got there. What ship was it?—The ship now called the Alexandra. Was the Alexandra in the

* See page 21.

† See page 22.

stocks at the time?—Yes. You saw the things in consequence of that order taken to the Alexandra?—Yes, the men have been waiting for them, and when I have taken them they have said, 'Are those for the gun-boats?' and I have said 'Yes.' That is the evidence of the packer. Now, your lordships recollect that this packer Hodgson is the servant of Fawcett and Company, the claimants, who are making the machinery. The ship is identified not only by the evidence which I have read, but also by the number 2209, by which she was known by the packer of Messrs. Fawcett and Company.

Then we have two persons who are very conversant with ship-building business, and the captain in the navy, to whom my lord has referred. The two persons to whom I allude are Mr. Black, a ship carpenter, a very intelligent witness, and Mr. Green, a ship-builder. I will take what Mr. Black says about the bulwarks, at the bottom of page 65 of my book.

The QUEEN'S ADVOCATE. It is at page 62* of the other.

Mr. ATTORNEY GENERAL. He mentions several things respecting the strength of the frame, and so on. But I will take him up where he speaks about the bulwarks. "Did you examine the bulwarks?—Yes. Did anything strike you with regard to the bulwarks; were they the bulwarks of a merchant vessel?—No. For what reason were they not?—From their extraordinary strength. Did you mark anything with respect to their height?—Their height is about two and a half feet. Is that high or low?—It might do with regard to height for a merchant vessel, but it is generally higher for a merchant vessel." That is, as I understand, that a merchant vessel generally has higher bulwarks. "But you say that the bulwarks were stronger than are used in a merchant vessel?—Yes. And likewise lower?—Yes. What are the upper decks made of?—Pitched pine. Have you ever seen pitched pine used for the decks of any vessel except vessels of war?—No. You never have?—No, except they are between decks. Do you consider this vessel altogether unadapted to mercantile purpose?—It is not qualified for mercantile purposes."—Then the form of the question is altered. "For what is she adapted?—She is adapted for war purposes. What is her appearance?—A very fine appearance, she looks a handsome piece of architecture, very fine lines, capable of great speed according to the power of machinery. What kind of war vessel should you say she has been built for? SIR HUGH CAIRNS.—He says she is 'adapted for,' not 'built for.'" The answer is "for a gun-boat."

Then at page 107, I think, comes Mr. Green.

The QUEEN'S ADVOCATE. It is at page 102† of the other book; he is examined twice.

Mr. ATTORNEY GENERAL. He was a ship-builder of many years' experience at Liverpool; he examined the ship, he is asked "How was she built?—I found her bulwarks differently formed from any merchant vessel or any other vessel than a vessel of war." Then he is asked to go on with the description; he says, "The bulwarks, to which I first alluded as being different from any other vessel but a ship of war, were composed of very thick planks, three inches thick inside and out. LORD CHIEF BARON.—What was it?—It was teak. The QUEEN'S ADVOCATE.—What was the thickness?—The inside and the outside planks were three inches thick in the lower part, and two and a half inches thick in the upper part, and they were about two and one-half feet deep. That would be from the deck to the top. Do I understand from you that that is an unusual thickness for a merchant vessel?—Yes." He says that she had three masts, and a propeller under water. He gives her dimensions; it is not a large ship of the kind. "Did you observe her rudder?—The rudder was very strong, and a very thick-formed rudder, unusually so. Was it thicker and stronger than would be used for a merchant vessel?—It was." Then he comes to the hammock racks, which I will observe upon presently. I will pass it over now, because that I think belongs to the furniture rather than to the structure.

Then I think that I may go to page 111 in his cross-examination.

The QUEEN'S ADVOCATE. It is at page 105‡ in the other book.

Mr. ATTORNEY GENERAL. He is asked this.

LORD CHIEF BARON. Who is this?

Mr. ATTORNEY GENERAL. Mr. Green. "Just one word about the bulwarks of this vessel; you say they are peculiarly strong?—I do. Does your knowledge enable you to tell me whether in a vessel of that construction it is necessary to have the bulwarks strong to strengthen it?—They have nothing to do with the strength, it has rather a tendency to weaken the vessel than to strengthen her. Did you examine the build of the vessel below?—I did not examine her very distinctly below. Was she in the water at the time you saw her?—In the water. Will you tell me as a ship-builder whether it is not a fact, that bringing up the bulwarks with additional strength added to the strength of the vessel?—No, it did not, it weakened her; it was an unnecessary weight unless for resistance of shot." I think that that is all upon that subject.

Then comes Captain Inglesfield, to whom my lord has referred; his evidence in my book is at page 61.

The QUEEN'S ADVOCATE. It is at page 58§ in the other copy.

Mr. ATTORNEY GENERAL. He was a witness whom everybody agreed in appreciating very highly, and I will, therefore, read his evidence, which is not long, pretty nearly

* See page 35.

† See page 57.

‡ See page 59.

§ See page 33.

at length. He is the commander of her Majesty's ship *Majestic*, stationed at Liverpool. He is asked, "Have you, assisted by the carpenter of your ship, examined the *Alexandra*, lying in the *Toxteth Dock*?—I have. Since the time of the seizure, I believe?—Yes. Did you carefully examine the fittings as far as they have gone?—I did. Are you able to describe to the jury the character of the vessel, as to her timber and construction generally?—I can. Of what timber is she built?—Principally of teak; her upper works are of other materials; the kind of wood I cannot exactly say, but I should call her a strongly built vessel, certainly not intended for mercantile purposes, but she might be used, and is easily convertible into a man-of-war. And speaking of the strength of the vessel, is she, in your judgment, of such strength as would be adapted to her being used as a man-of-war?—She is. Did you find whether she had an accommodation for men and officers such as would have to serve on board a man-of-war?—She has. And as regards stowage room and the building of the vessel, what say you to that?—As regards stowage room, she has only stowage room sufficient for the crew, considering the berthing of the crew to be for about thirty-two men. And as regards her build generally, is it your opinion that she is adapted for a man-of-war?—She is quite capable of being converted into a man-of-war without having at the time I saw her any appearance of fittings for guns." That was the answer to which his lordship referred. "You say that there were no guns or immediate preparation for guns?—There were none. But having regard to the building of the vessel might she or not, in your opinion, be fitted for guns?" There was a little interruption, and the attorney general put his question again, and the answer was this, "She is of sufficient length to receive guns, but without any of those appurtenances which would indicate that guns were about to be put on board. Would you tell us to what you refer in speaking of the appurtenances which indicate an absolute intention of putting guns on board?—Ring bolts at the side and plates on the decks upon which pivot guns would turn. **SIR HUGH CAIRNS.** There were none of those." Then the attorney general asked, "Would there be any difficulty in your judgment in adding to the ship as she is now those preparations for guns?—No difficulty." His lordship interposed and said, "Not only no difficulty, but it could be easily done?" Then the answer was, "Easily converted into a man-of-war. The ATTORNEY GENERAL. When you speak of a pivot on deck, do you speak of three guns or of several guns?—She might have two or three pivot guns. Would she, according to the ordinary arrangement now-a-days of men-of-war of her size, probably carry two or three guns, or more, on pivot?—Probably three guns. Would those, according to the ordinary course in these matters, be guns varying in size, or guns of the same size?—Of varying size." He is asked, "Would the smaller or the greater guns predominate in number?" He says, "I could only tell what guns would be fitted to the vessel by knowing what size was intended to be put on board; if they were smaller guns they must have ports;" (there are no ports to the ship); "but if guns of certain dimensions, they would be pivot guns, and would fire over the bulwarks. Without ports?—Without ports." Then he is asked, "I suppose if it were intended that they should fire over the bulwarks, the bulwarks would be constructed comparatively low, would they not?—Yes, they would. How did you find the bulwarks in this ship?—Low, but not similar to the bulwarks of gunboats in our service. Over which they were to be fired?—Of certain dimensions." The Lord Chief Baron says, "these were low, but not low enough according to our service, was, I think, your answer?—Not the same description as those in our service. They would be flying bulwarks." I suppose he means that those in the service of the British government would be flying bulwarks; these are fixed bulwarks. "But would there be any difficulty, without proper gun-carriages, in firing guns over those bulwarks?—It would be entirely dependent on the size of the gun. But with a proper adaptation of the size of the guns it might be done?—Certainly. About what height, so far as you recollect, of gun-carriage would be required to enable the gunners to fire over those bulwarks?—The gun-carriage and slides in different kinds of guns vary very much in size; therefore I must know the kind of gun to be able to judge of the height or size of the carriage. It would depend on the kind of gun. Yes; but with certain kinds of guns it might be done?—Perfectly."

Then he is very shortly cross-examined. It is right to read what passed then. He is asked to give the grounds of his calculation of thirty-two men for the crew, which he does. He says it would be rather close quarters. Then he is asked, "You say that the vessel was fitted for a yacht, and is easily convertible to a vessel of war." I do not think that that was the language of the witness that she was fitted for a yacht. The question proceeds, "She could be used, I suppose, for mercantile purposes; not merely for a yacht, but she was capable of being used for mercantile purposes?—No, she was not capable of being used for mercantile purposes, because she had no stowage for merchandise. What state were her cabins in when you saw her?—They were not finished, but they were all laid out and bulk-headed off. Besides the accommodation for men, there were cabins for five officers, a captain's cabin, and a mess place. Were the cabins fitted up, or did you merely see the partitions between them?—They were partly fitted up; sufficiently to distinguish them as cabins. What was the difference between the

cabins you saw and the sort of cabins that might be found in a yacht, supposing she was to be used for that purpose?—No difference."

My lords, that is the evidence as to the structure of the ship and the preparations connected with the structure for a particular use and service, and giving her a particular character. I have read the evidence to your lordships, and you find that the witness who is in the claimants' workshops says that he was ordered to carry the machinery to the gunboat; the other witness, the engine-driver, says that she is just like the other gunboats which had been built here before, but built for the government; Captain Ingfield says that nothing is wanted but to put in the pivot plates for the guns to run round, and the bolts; that they can be done at any moment; that that is not done yet, but that she is in every respect adapted for a ship of war, and nothing else; and Mr. Black and Mr. Green tell us that she has bulwarks which would be worse than useless, and absolutely injurious, unless she were meant for a ship of war—bulwarks specially adapted to resist shot, and bulwarks which would be an absolute incumbrance if she were used for any other purpose.

But now we come to the fittings, furnishings, and equipments, distinct from the structure. I trench here upon ground which we shall find very material when we come to the questions of law. I say that it is utterly immaterial whether these equipments are of a warlike character or not; if the vessel is meant for warlike purposes, any equipment whatever for that purpose, however ambiguous in its character, is sufficient; and here, I think, is the source of the glaring fallacy which seems to have pervaded some part of the argument, and not to have been entirely seen through by the learned judge who tried the case. Any kind of furnishing and fitting out whatsoever is against the statute, provided always that the intent and the purpose is proved. What I have already said goes far, I think, in the direction of proving intent and purpose, though I have not at present referred to it with that object; but I now wish your lordships to see what had been done in the way of equipment and furnishing and fitting out, which was in progress, and which of course was meant to be completed, which is separable from the mere structure of the ship and from the mere ship-builder's work. The fitting out and the furnishing was going on at the same time that the building was going on, and it was being done by Fawcett and Company, the claimants; and in the evidence of Mr. Barnes, Mr. Robinson, and Mr. Carter, three of the people who were at work about it, we shall find what was the exact state of things as to that and as to the hammock nettings, which I postpone, which other witnesses, Mr. Morgan and others, speak to. Mr. Barnes's evidence is at page 41 of the smaller book.

The QUEEN'S ADVOCATE. It is at page 36 of the other.

MR. ATTORNEY GENERAL. Mr. Barnes was, I think, an engine-driver in the yard of the builders, Messrs. Miller, and with regard to the progress which had been made in fitting up the ship, and with her appointments and appliances; he says this at page 41.* He is asked, "What was brought there to be put into the Alexandra?—I did not see anything brought there, only the boilers. Who brought the boilers?—I cannot say who brought them. Where were they put on board the Alexandra?—In the dock. I did not see them put on board. I saw them after they were in. In the Alexandra?—Yes. Where was it that you saw them in the Alexandra?—In Toxteth dock. Were any of Messrs. Fawcett and Preston's people there then?—Yes, the boiler-makers. Some of the boiler-makers in the employ of Messrs. Fawcett?—Yes. They were in the Alexandra then?—Yes. It would be about those boilers?—Yes."

Then there is Mr. Robinson, who is, I think, a joiner. There is a little passage in his evidence. "He was being employed," he says, "just before the beginning of his cross-examination, by the direction of Messrs. Fawcett and Preston's foreman, in Messrs. Millers' yard, upon the Alexandra, in fixing a frame for the pitch of the propeller shaft;" and Carter, who was a joiner in Messrs. Fawcett and Company's yard, at page 44†, in the beginning of his examination, is asked this question: "For some time before you left in April last, were your masters, Messrs. Fawcett, Preston and Company, making machinery for a propeller boat?—Yes. Was the boat for which the machinery was being prepared known in your workshop by a number?—Yes. What was the number?—2,209." And then he identifies the Alexandra, on board of which he has been, with the ship which was so numbered. Then at page 53 Mr. Hodgson, the packer, gives evidence.

The QUEEN'S ADVOCATE. That is at page 48‡ of the other book.

The ATTORNEY GENERAL. He speaks of machinery being made for these ships, and says that it had to pass through the packing-room, and that it was taken to this ship. He is asked, "Were you sent for machinery for that number?—Yes. And for clenches and bolts?—Yes. You had to pack them?—I took them up myself. Did you take them to the ship?—Yes. And you know that they were for that ship by that number?—Yes." Then he repeats that, in the next page, about taking, by order of the foreman, machinery, clenches, and bolts to the gunboat; and at page 59 we are told by the same witness, I think, of the work which was going on at the very time of the seizure, and which was stopped upon the seizure. "Were any orders given by Mr. Speers" (that is the manager) "that night for sending anything on board her?—Yes. Nothing more was to be done. Was that after the seizure?—Yes. Do you recollect any orders given

* See page 31.

† See page 33.

‡ See page 38.

before which were countermanded by that order; were any orders given before the seizure to take anything down to the ship?—They came down from the workshops to the packing-room. What were they?—Eccentric pump-buckets, and bright work. These were to have been put on board, but were stopped?—No; they were in the packing-room, and were to go down in the morning when she was seized.” That is also part of the fitting and the equipment.

Then we come to the question of the hammock nettings, which your lordships will find not only relate to the same matter, namely, furnishing and fitting up, but have a special connection with the warlike purpose. The evidence as to that is, first, that of Mr. Morgan, the seizing officer, who, at page 21* of the small book, is asked, “When you seized the *Alexandra*, what was going on at the time on board the ship; was she completed?—When I seized her, about the time of the seizure the workmen were variously engaged on board her. Do you remember whether they were preparing anything for the hammock nettings?—Yes; they were fitting the stanchions for the hammock nettings. Were these iron stanchions on board the ship in the hold?—They were fitted in their places.” They were fitting the stanchions for the hammock nettings. As to the hammock nettings, if your lordships will turn again to the evidence of Mr. Green, the shipbuilder, at page 108 of my book, and some subsequent pages, we shall have a little further light about the matter.

The QUEEN'S ADVOCATE. It is at page 102 of the larger book.

Mr. ATTORNEY GENERAL. At page 108† he is asked this question: “You have spoken of the bulwarks; did you observe anything about the bulwarks?”

LORD CHIEF BARON. What witness is this?

Mr. ATTORNEY GENERAL. Mr. Green, my lord.

LORD CHIEF BARON. We have not copies here.

Mr. ATTORNEY GENERAL. They will be here shortly, my lord; there are some on the bench. The question is, “You have spoken of the bulwarks; did you observe anything about the bulwarks, any arrangements made for the upper part of the bulwarks to be fitted up with anything?—I discovered several iron stanchions for hammock racks, which were not put up, but there were arrangements being made for the staples to receive them; they were on board, but there were staples in the side of the vessel to receive them. What, in your judgment, were the hammock racks for?—For hammocks. Is that usual on board a merchant ship?—Very seldom.” Then I pass over something about the scuttles and hatchways not being suited for a merchant vessel, which I will not dwell upon, but will go to page 111 in my book.

The QUEEN'S ADVOCATE. It is page 106‡ in the other.

Mr. ATTORNEY GENERAL. In cross-examination he is asked this question: “According to your experience in yachts, are the hammocks occasionally put up on these hammock racks?—Very rarely. Do they ever do so?—I have known large sailing vessels fitted up somewhat similar.”

LORD CHIEF BARON. This, I think, is the cross-examination?

Mr. ATTORNEY GENERAL. Yes, my lord. “And fitted with conveniences for putting the hammocks on the bulwarks?—Yes. The sole object of that is for the purpose of greater cleanliness among the men?—Yes. And for having the hammocks put from below to air them?—Yes; and there is another object. Their original intention was to resist shot; that was their original intention. The object when it is used in a yacht is for the purpose of airing the hammocks of the men, is it not?—Yes.” Then, in his re-examination at page 112,§ he is asked a little more about it. The Queen's advocate says, “I did not understand what you said about the hammock racks as to their resisting shot.—The original fixing of hammocks on the hammock racks was to resist shot from musketry, which they will do.” Your lordships understand perfectly how they will do it; it is like a pillow or something which receives the shot and deadens it. The next question is, “As I understand you, that is not usual on board merchant ships?—Very rarely so.”

My lords, I have, I think, given you that portion of the evidence which relates to these things, and which is unequivocally connected, beyond the possibility of doubt, with the ship itself. I will now refer you to those parts of the evidence as to which I admit it would have been for the jury to say whether they were satisfied or not that these guns and gun-carriages were meant for this ship, but which show the contemporaneous preparation under the same superintendence and by the same persons, the claimants, Messrs. Fawcett and Company, of just such three guns and gun-carriages as, according to Captain Inglefield's evidence, would be natural and useful to be put on board this ship. Your lordships will find the evidence on that subject to be that of Robinson and Carter, at page 42.

The QUEEN'S ADVOCATE. Robinson's evidence is at page 40 in the large book.

The ATTORNEY GENERAL. At page 42,¶ Robinson, a joiner, in the employment of Messrs. Fawcett, Preston and Company, is asked this question: “Was it your business to make gun-carriages?—Sometimes. Do you remember in particular making gun-

* See page 11. † See page 57. ‡ See page 59. § See page 60. ¶ See page 22.

carriages, or helping to make gun-carriages, for three guns in particular?—Yes. What were the guns that you were making gun-carriages for?—Pivot guns. How many, I mean?—Three. Was there one large gun?—I believe there was. And two other smaller guns?—Yes." Then he says that Carter was helping; then he speaks of the intervention of a gentleman named Hamilton, which I will reserve until I come to the second branch of the case, namely, the intent; because I shall have occasion to come back again to it. He inspected the making of those gun-carriages.

Then Carter's evidence is at page 46 of my book.

The QUEEN'S ADVOCATE. It begins at page 41 of the large book.

MR. ATTORNEY GENERAL. Carter is a person who was concerned in the preparation of the machinery and guns. He is asked at page 46, "Do you remember while the machinery was in process for the Alexandra, whether any gun or guns were prepared?—Yes, they were preparing some at the same time as she was in the building. I think you said some carriages just now? Some carriages and guns were prepared at the same time."

The QUEEN'S ADVOCATE. That will be about ten lines from the bottom of page 43.

MR. ATTORNEY GENERAL. "At the same time that the machinery was being prepared, as I understand you?—Yes. Was it any part of your business, and were you employed with regard to the gun-carriages and the slides for those guns?—I was working at them." Then he is asked about the numbers, and he is able to give what he believes to be the numbers of the two small guns, namely, 2,205 and 2,204; he could not remember the number of the large one. "Of the large one I would not say." He says he could not say one way or the other what the number was, and in that way he could actually prove that the large gun was meant for this ship; but by circumstantial evidence it is connected with the rest. I do not know whether I may read this question and answer at page 47: "As to the manufacture of the guns and gun-carriages, I think you said it was going on at the same time as that of the machinery?—Yes." Then the attorney general asks whether "the whole was treated as one job?" Counsel interposes, and says, "He has not said so." He is asked whether it was so or not, and he says, "No." I suppose he means that they had different things; it may or may not be an answer tending to separate the purpose; that would be for the jury to judge. "Were they, as far as you could see, manufactured for the use in the same vessel as the machinery or not?—That I could not say; they might be or they might not be." Of course it does not prove that they were, but it shows plainly that he had no knowledge to the contrary. Then at page 48 of the evidence of the same witness he is asked, "Do you remember about what time it was that the casting of the guns for the carriages was going on?—It was all going on together."

The QUEEN'S ADVOCATE. That is at page 45 of the large book.

MR. ATTORNEY GENERAL. "At the same time that the rifling of the small guns was going forward?—Yes. As to the rammer and sponges for the guns, were those made in the same shop?—No. In the pattern shop?—Yes. That is another place, is it?—Yes. Were those gun-carriages of a common or an unusual kind?—They were good ones. Were they of an ordinary description, or were they rather difficult to construct?—Rather difficult, I should say. Not of a very ordinary or common description?—No. Do you remember what they were made of?—English elm. And of what were the slides made?—Teak wood. Did you happen to know where the teak wood for the slides was obtained?—Yes. Where?—At Mr. Miller's. At Mr. Miller's yard?—Yes." It is right to state that in cross-examination he was asked whether Mr. Miller dealt in timber, and he said that he did. It is for your lordships to judge of the weight of that part of the evidence.

I do not think that there is anything more which I need trouble your lordships with upon that subject. I will not read anything to which exception is taken, and about which there might be a dispute as to whether it was lawful. I do not know; your lordships will judge. Let it be considered unread, if your lordships think that it was an objection which the court ought to have allowed. Hodgson is asked at the bottom of page 55 and the top of page 56 this. He speaks of taking the clenches and the bolts on board the Alexandra after receiving a certain order, and in consequence of that order. Then he is asked, at the bottom of page 55, "Do you recollect packing any of the guns that were made at that time?—No, not the large ones; I packed the small ones. How many guns were there for that job?" The answer is, "Intended for the boat, three." Then Sir Hugh Cairns says, "Really my friend ought not to put such questions. I object to my friend putting his question in that way, 'for that job.' We have not heard that there were any guns for any job yet." I cannot help thinking that the answer was legitimate, and that the jury would have been able to apply it. However, so much for the evidence about those guns and the gun-carriages; it stands on a different footing from the rest in this respect, that it was open to argument whether the evidence unequivocally connected those guns and those gun-carriages with the Alexandra. With regard to all the other equipments and fittings which I have mentioned of a character which was not so distinctly warlike, there was no doubt about it.

I now come to the evidence as to the intent and the purpose. I said that when I had gone through that evidence, I would examine its proper application with respect to the act of Parliament. Your lordships will remember that I have already said that I consider the clause in the act of Parliament clearly and distinctly to lay this down: that any species whatsoever of furnishing and fitting, or of equipment, is against the clause, if it be with intent or in order that the ship or vessel shall be employed in the belligerent service of a foreign people or state, against persons with whom her Majesty is not at war, and that it is wholly unimportant in that point of view, whether the particular furniture, the particular fitting, or the particular equipment, is of a character which would be equally useful in ships not of a warlike kind, or not; and it is not necessary that it should have a specific character, if the warlike destination and purpose of the use and employment of the ship is made out. I think that I have at all events given your lordships evidence quite enough to make it clear (and that evidence is not contradicted) that this ship was specially adapted in her construction and in her bulwarks more particularly for warlike purposes, was built for warlike purposes, and that she was equipped, fitted out, and furnished, *de facto*, so as to enable her to take the seas at the time when she was seized. I now come to the evidence bearing upon the question of intent. It stands thus: My lords, we proved in a manner, which I should have thought clear beyond the possibility of doubt, and which was wholly uncontradicted, that these things were done under the superintendence and with the interference of the persons whom we proved to have been the agents of the Confederate States, for the purposes of their war service, and those persons, my lords, are these: Captain Bulloch in the first place, specially sent to this country for that purpose, specially sent to this country manifestly to organize here the means of carrying on war on the seas, as the servant and the officer of the Confederate States; Mr. Hamilton, another officer and servant of the Confederate States obviously employed for like purposes; the firm of Messrs. Fraser, Trenholm, and Company, mentioned in the information.

Mr. BARON CHANNELL. I did not catch Mr. Hamilton in your opening of the information.

Mr. ATTORNEY GENERAL. No, my lord, when the information was filed he was not known to us; he is not named; we say "divers persons unknown," which is quite lawful. Of course with regard to him there was not the same notice upon the face of the information that there was as to the others.

Mr. BARON CHANNELL. I understand you.

Mr. ATTORNEY GENERAL. Then there is the firm of Fraser, Trenholm, and Company, named in the information, interfering with regard to the construction of this ship, by one of their partners, named Welsman, who we proved was one of the gentlemen at the office at Liverpool, which we proved was the seat of the agents of the Confederate States, who conducted their belligerent business, and who paid the officers on board the Alabama and other ships constructed here, thus using the neutrality of this country, through which those payments were made. Then there is a Captain Tessier also found interfering, whom we proved to be connected in like manner with that service, and more especially upon the occasion of taking out to the Alabama her stores and munitions, which it was thought convenient to put on board elsewhere than within the territory of the Queen.

My lords, that is the first head of the evidence bearing upon this part of the case—evidence of *res geste* evidence depending upon the actual interference of these people, both at Messrs. Miller's yard and at Messrs. Fawcett's workshops, and at the same time the most unequivocal proof of their character. Then we have, in addition, the direct admission of Mr. Miller, the builder, in whose possession the ship was, and out of whose possession she was taken, that she was being built under a contract entered into jointly by Messrs. Fraser, Trenholm, and Company, and Messrs. Fawcett and Company with the Confederate States to be employed in their service.

Now I will first of all give your lordships the evidence which qualifies the persons whom I have named as the agents in this country of the Confederate States. The proof of that is principally to be found in the evidence of two persons, named Yonge and Chapman. Now, my lords, I may say one word with regard to the line of cross-examination adopted as to those witnesses, and the course taken in addressing the jury, by the very able counsel who then appeared for the claimants. There were no other witnesses who were damaged the least in cross-examination in any sense, but certain things appeared with regard to these gentlemen which are no doubt very fairly open to observation. Your lordships will hear what those things were in time, but you will find that every word which could be founded upon that cross-examination was merely *in prejudicium*, and could not possibly be addressed to any candid mind for the purpose of influencing a determination according to the truth of the evidence, because what these witnesses proved did not rest upon any doubtful matter; it was established and confirmed, not merely by their statements but by the documents which were produced and placed beyond the reach of controversy, some of them produced by these gentlemen themselves, Messrs. Fawcett, Preston, and Company, or Messrs. Fraser, Trenholm, and Company, whose character was in question, and there could be there-

fore no doubt whatever as to the facts which they proved whether those were witnesses of a kind which in other respects one would like to be identified with or not. I am going to give you the evidence which they give. I will take first the evidence of Yonge.

THE QUEEN'S ADVOCATE. It is at page 113.*

MR. ATTORNEY GENERAL. I will first of all take what he proves as to Captain Bulloch, and afterward what he shows as to Mr. Hamilton, and then what he proves as to Captain Tessier. Page 120 is the first place that I refer to now. Mr. Yonge states that he is a native of the State of Georgia, and was for some time paymaster on board the Alabama. He says that he came from the port of Wilmington in North Carolina, in a ship called the Annie Childs, to Liverpool, arriving at Liverpool on the 11th of March, 1862. He is asked, "In what employment had you been previously to leaving Wilmington?—I had been a clerk in the paymaster's office on the foreign station at Savannah in Georgia. Was Savannah a naval station?—Yes, it was at that time, it never had been previously to this war. At that time it was used as a naval station?—Yes. For what purpose?—For the confederate forces. You tell us you were a clerk in the paymaster's department; did you know from your connection with the confederate navy who at that time was acting as secretary to that navy?—S. A. Mallory, he was the secretary to the confederate navy." Then he is asked whether he saw at Savannah before he left, a person named Bulloch, and he says, "I did. He came with me." That is to say, Captain Bulloch came with this witness from Wilmington to Liverpool in the Annie Childs.—"He came with me as far as Queenstown, and there he left the ship and went on land, but we came over together in the same vessel. Do you know from what you saw at Savannah whether Bulloch was in any capacity in the confederate service?—I never saw Captain Bulloch's appointment, but I know that he acted for the confederate government. In the navy, the military, or what service?—In the navy. He acted in the confederate navy?—In the confederate navy. LORD CHIEF BARON. Did he command a vessel?—No, he did not command any vessel. THE ATTORNEY GENERAL. Did you act for a time as his secretary?—I did. And acting as his secretary, and communicating with him as your principal, do you know that he did act or not with reference to the confederate navy?—I know that he acted, because I saw all the letters of the secretary of the navy to him and his replies to those letters. Was it a part of your business to make copies of those various communications?—I copied all his letters; there may have been a single letter which I did not copy." Then he says that he knows Mr. Mallory's signature to certain letters which I will not refer to now.

Then going to page 124,† (I will resume this about Captain Bulloch,) the question is asked, "On your arrival at Liverpool, with whom, if with any one, did you first communicate?"—The witness says, "Do you mean last year?" The attorney general says, "I mean when you came to Liverpool from Wilmington, in the month of March, 1862?—I was in communication all the time with Captain Bulloch."

THE QUEEN'S ADVOCATE. That is at the bottom of page 117, my lord.

MR. ATTORNEY GENERAL. "You came with Captain Bulloch?—I came with Captain Bulloch. And did you take counsel with him, and did he direct generally what you should do?—Yes, he did. Shortly after your arrival at Liverpool, did Captain Bulloch introduce you to any mercantile firm there?—Yes, to the firm of Fraser, Trenholm, and Company." Then the names of the partners are mentioned. "Did you communicate with the firm of Fraser, Trenholm, and Company?—I did." He mentions Mr. Armstrong, who is one of them?—"He was the principal person that I had any business with. You did see Mr. Pringle and Mr. Welsman?—Yes. As members of the firm?—Yes."

Then at page 125, the next page, a little way down, after saying that he does not recollect seeing any flags, he is asked this.

THE QUEEN'S ADVOCATE. That is at the bottom of page 118.‡

MR. ATTORNEY GENERAL. "You say you were introduced to those persons?" (that is, to the members of the firm of Fraser, Trenholm and Company.) "Who introduced you?—I was introduced by Captain Bulloch. Did you see Captain Bulloch there from time to time at the office of Fraser, Trenholm, and Company?—I did." He is asked: "I thought you said (I want to be certain) that you yourself were there nearly every day?—Nearly every day. By the direction of Captain Bulloch?—Yes; I had to meet him there sometimes. Were these meetings between Captain Bulloch and yourself on matters of business? I will not at present ask what the business was, but I merely confine myself to the question, were your meetings upon matters of business?—They were frequently; that was not always the case. But principally?—They were principally on business. On the business on which you had come over?—Yes." Then he is asked: "Do you remember whether there was a room in the office or house of business of Fraser, Trenholm, and Company particularly used by Captain Bulloch?—There was a room used by them, the only room in which we wrote our letters and transacted our business generally. It was used, you say, by them?—By Captain Bulloch and by Major Hughes, a gentleman of the war department. Then there was one room used

* See page 64.

† See page 66.

‡ See page 66.

particularly by Captain Bulloch for his business?—Yes.” That was the room in which the witness transacted business with Captain Bulloch. Then he mentions that among others with whom he used to transact business there in the office was Major Hughes, of the confederate army, and then he mentions some other people, which I will not dwell upon. Then, at page 130, he is asked this: He mentions going out with certain other people on board the Alabama from Liverpool. I should mention that at page 129* he says that he remained at Liverpool from the 11th of March to the 29th of July, 1862, and that he then left Liverpool in the Alabama, which was then called the Eurica. He says that it was the vessel built by Messrs. Laird. “When that vessel left, she had no armament on board?—Nothing at all in the way of armament. While you were on her, did she receive her armament and hoist the confederate flag and pass to the command of Captain Semmes as a ship of war?—She did. All that you saw?—I saw it.” Then he mentions one or two other officers who went with him in the Alabama, and some who went in another vessel, the Bahama, which met her at the rendezvous elsewhere.

THE QUEEN’S ADVOCATE. That is at page 123.

MR. ATTORNEY GENERAL. “Captain Bulloch went out and returned in the Bahama?—Yes,” (to meet the Alabama.) “Leaving Captain Semmes and other officers in the Alabama?—Yes. Before you left Liverpool in the Alabama, were you employed as paymaster?—I acted in that capacity. You acted as paymaster in the confederate navy?—In the confederate navy. We will see what you did; you continued to act in that capacity for some time?—During the entire time I was in Liverpool I acted in that capacity. And you made payments in that capacity?—Yes; I continued to make payments in that capacity.” Then a paper is put into his hand, which he proves to be signed by Captain Bulloch. “Look at that paper and tell me is that the signature of the gentleman you have described as Captain Bulloch?—That is it.” He says that the appointment was made out, and then he says that payments were made. I will come to the payments presently. Now with regard to the paper—the paper you will find in page 11 of the appendix to the larger book, it is not printed in the smaller book—and it is in these terms: “Liverpool, 30th July, 1862, addressed to Clarence R. Yonge, acting assistant paymaster C. S. N.” (which, I suppose, means Confederate States navy.) “Sir: By virtue of authority granted me by the Hon. S. R. Mallory, secretary of the navy of the Confederate States, I hereby appoint you an acting assistant paymaster. This appointment to date from the 21st day of December, 1861. Very respectfully, Jas. D. Bulloch, commander C. S. navy.” My lords, under that appointment he acted, and Messrs. Fraser, Trenholm and Company made through him large payments on behalf of the Confederate States to the different officers and persons who were to be paid. Going back to page 131,† he gives an account of that: “This paper,” he says at the bottom of page 130, “was given to me on board the Alabama the day she left Liverpool.”

THE QUEEN’S ADVOCATE. That is at page 123.

MR. ATTORNEY GENERAL. “You got it just as you were going away?—Just after we left; I think we were away at that time in Moelfra Bay.” That is in Wales. “While you acted as paymaster in Liverpool, as I understand you, you had not any writing which authorized you to do so?—I had no writing. But Captain Bulloch was there in Liverpool, who knew of the payments that you were making from time to time?—He did; that is the only writing in which my name appears as paymaster. You say you acted as paymaster?—Yes. You have told us in what way; although you had no writing, were there any directions or orders given to you to act in that capacity?—There were. By whom?—By Captain Bulloch. But they were not written?—Not written.” That is, while he was at Liverpool. “You made payments to various persons, were those persons in the confederate service to whom you made these payments?—I have made payments to the officers; I know the persons I made the payments to were in the confederate navy. Who supplied the money?—I made requisitions to Captain Bulloch for the amount, and I received an order from him to pay the moneys either by check or money itself. That was the way in which you received the money?—Yes. How did you get the money?—I was to make requisitions for the amount required at the end of each month. From Captain Bulloch?—From Captain Bulloch. How did he pay you?—He would give me an order on Messrs. Fraser, Trenholm and Company. You say that the money was furnished by Messrs. Fraser, Trenholm and Company; on the occasions of the money being furnished, have you delivered to them any order or anything of the kind?—I delivered Captain Bulloch’s order.” Then the orders being called for are produced by Messrs. Fraser, Trenholm and Company, and your lordships will find at page 133‡ the form of them: “Liverpool, 1st May, 1862, addressed, Messrs. Fraser, Trenholm, and Company, signed, James D. Bulloch. Pay to the order of C. R. Yonge, assistant paymaster, on account of officers’ pay.” Then there are several orders of various amounts, not inconsiderable in the whole.

My lords, I think that Captain Bulloch’s character is as well established by that evidence as anything in the world can be. At pages 134 and 135 there is a further examination of the same witness about the document, which I have read to your lord-

* See page 69.

† See page 69.

‡ See page 137.

ships, appointing him paymaster; I do not think that I need read that, there are more payments connected with it.

Then, Mr. Yonge also gives evidence concerning Mr. Hamilton, whose name I have mentioned to your lordships. At pages 133 and 134 of the small book he mentions the names of several officers in the confederate service to whom, as paymaster under the appointment which I have read, he has paid various sums of money.

The QUEEN'S ADVOCATE. That is at page 126.*

Mr. ATTORNEY GENERAL. Among others he mentions Captain Bulloch, and himself, too, and then he mentions J. R. Hamilton; you will find elsewhere, I think, that the name is John Randolph Hamilton. He says: "I have paid (among others) Jno. R. Hamilton money. You have paid officers' pay to them?—I have. When you say you paid officers' pay to Hamilton and to those others, was the pay of officers in the army or in the navy?—It was the pay of officers in the navy. Altogether?—Altogether. I suppose the payment varied according to the rank of the officer?—According to the rank. What pay in a rank did you make to Mr. Hamilton?—As a lieutenant. A lieutenant in the navy?—The pay of a lieutenant in the navy according to the length of time they had been in the navy. I do not know whether you happen to have known Mr. Hamilton before?—I did. As what?—As lieutenant. In the confederate navy?—Yes; in the confederate navy. Was that in a Confederate State?—In the Confederate States." Then he is asked: "Do you happen to know when Mr. Hamilton came to England?" And he says: "I know within a day or two from my own knowledge. Did he come before you or after you?—He came some time after me. Did you leave Mr. Hamilton in Liverpool when you went out with the Alabama?—I did." And he has not seen him since.

Then, with regard to Captain Tessier, at page 138 of the evidence of the same witness, he speaks of the Bahama as coming out from Liverpool to meet the Alabama, bringing guns and naval stores and munitions of war, which were transhipped there, and the Bahama, he says, was at that time under the command of Captain Tessier.

The QUEEN'S ADVOCATE. That is at page 130,† at the bottom.

Mr. ATTORNEY GENERAL. Then he mentions what stores were received from the Bahama by the Alabama, gun-carriages and guns. Perhaps before I conclude with Mr. Yonge it would be right to mention the effect of the cross-examination. He was very ably cross-examined by one of my learned friends, who was engaged at the trial—Mr. Karlake—who seemed to be very well informed of his history. It is quite evident, I think, that at one time or other there had been a perfect intimacy with the history of this gentleman, and it was brought out in cross-examination that he was certainly a man of morality by no means unimpeachable; that he had formed a connexion with a black woman who had passed as his wife, and whom he had deserted at Liverpool under circumstances which I cannot represent as creditable; that this black woman had a black boy, and that this lieutenant and paymaster in the confederate service, "raised," as I think he described himself, in the State of Georgia, had suggested that a little money might be made of the black boy—that he might be sold. My learned friend the attorney general, in his reply, made some observations which the learned Chief Baron described as an attempt to whitewash Mr. C. R. Yonge. Far be it from me, and I think it was very far from the intention of the attorney general, to whitewash any acts of that description. But what the attorney general said, I take the liberty of repeating to your lordships, namely, that all criticism, however disagreeable it might possibly be to Mr. C. R. Yonge, had no bearing whatever upon the evidence which I read to your lordships, which was accredited by the *littera scripta* and the *res gestæ* by the documents presented by Messrs. Fraser, Trenholm and Company themselves, and Captain Bulloch, and against which there was no imputation. This was the whitewashing. It was no whitewashing at all, it was the simple truth. We in England are accustomed to liberty, we have no power of selling black man or white man, but this man came from a country where these things are common, where that practice exists, and you are not to suppose that a man bred up in the morality of slavery would look upon transactions of that kind as we do; and a man who is employed in such a service as that of burning and destroying all the merchants' ships that can be met with upon the wide ocean is of course not likely to be a man of very tender nature and one who shrinks very much from acts which we shrink from and ought to shrink from. There can be no doubt whatever that in the Confederate States he would have been a perfectly good witness, notwithstanding the selling of a black boy; we know that in those States they do not allow a black boy or a black man or woman to come into the witness-box and tell his or her own story, whatever may have been the evil done. Therefore all that was mere clap-trap; it had no bearing whatever upon the question whether these written documents did or did not prove that to prove which the witness was brought forward, namely, to prove the agency of Captain Bulloch for the Confederate States. The documents were the material things, nobody could discredit it, those documents which were produced by Messrs. Fraser, Trenholm and Company themselves, and therefore I say that for the sole purpose for which that witness was produced the clever cross-examination and the elegant vituperation of my learned friend Sir Hugh Cairns

* See page 71.

† See page 73.

was perfectly irrelevant; it was beside the mark, it did not tend to discredit the testimony upon the only point on which it was brought forward, because it did not rest upon the word of C. E. Yonge, it rested upon the acts of Captain Bulloch, upon the acts of Messrs. Fraser, Trenholm and Company—the payments actually made by them to him in that capacity in which he swore that he acted and by Captain Bulloch's order—and therefore it was totally impossible for any jury or any judge who had the truth in view to be misled by any eloquent declamation from believing that those facts which the documents proved were the real facts in the case, and we wanted nothing from Mr. Yonge, except to prove the character and agency of Captain Bulloch. Exactly the same remark applies to another witness, against whom there was not quite so much to be said, namely, Mr. Chapman, who stated himself that he went under false colors into the office of Messrs. Fraser, Trenholm and Company, affecting secession sympathies, whereas he had them not—I am very far indeed from justifying that, but the facts are just the same—the actings of Mr. Hamilton and the actings of Captain Bulloch, as to the *Alexandra*. Your lordships will presently hear from the evidence we wanted to know their characters, and who and what they were, and I say it is utterly immaterial whether Mr. Chapman acted honorably or not, and whether or not Mr. Yonge is to be judged by the rules of English or Georgian morality, when he talks of selling a black boy. It is utterly impossible to doubt the evidence of those persons as to the character of Captain Bulloch and of the other persons when they were here.

Now what Mr. Chapman says is at page 113.

The QUEEN'S ADVOCATE. This evidence is at page 107* of the larger book.

MR. ATTORNEY GENERAL. My lords, Mr. Chapman stated that he was of no occupation. He came to England about four months before his examination, and was at Liverpool, he says, about "two months ago." "At that time had you business on which you wanted to see a person by the name of Captain Bulloch?—I wished to see Captain Bulloch." He went to see him at the office of Messrs. Fraser, Trenholm and Company. "Was Captain Bulloch a person you were acquainted with in America?—He was." He went to that office to see Captain Bulloch about the first of April, and went there more than once. Upon the first occasion he saw one of the members of the firm, Mr. Prioleau, and it was then he spoke as if he was a secessionist. He says he saw the confederate flag, then he says that he was acquainted with Yonge in the United States and met his wife (that is this black woman who passed as his wife) in Liverpool, and she intrusted this witness with the letters, which letters were obtained from him, and which were the letters which were proved by Yonge to which I have referred. I pass over that and come to what he says at page 115. He called again and saw Captain Bulloch and conferred with him upon the subject of those letters at Messrs. Fraser, Trenholm and Company's office a second time.

The QUEEN'S ADVOCATE. That is at page 109, toward the end.

MR. ATTORNEY GENERAL. Then, with regard to Mr. Hamilton, at the bottom of page 117, he is asked this.

The QUEEN'S ADVOCATE. It is page 111† of the other book.

MR. ATTORNEY GENERAL. "Now, Mr. Chapman, while you were at that office, that is, the office of Messrs. Fraser, Trenholm and Company, with Captain Bulloch, did any one else come in?—Mr. Hamilton. Who was Mr. Hamilton, was he a person known to you before?—Yes, he was. What was he?—The son of General James Hamilton, of South Carolina, formerly governor of that State, and he was himself a lieutenant in the service of the United States until the year 1861." I think that that is sufficient; we have the account of his subsequent career from Mr. Yonge, and we all know that that was the time at which South Carolina seceded from the United States, and when the secession began.

I think that I need not trouble your lordships with more upon that matter. I now come to the acts and intervention of the different persons whom I have named, Captain Bulloch, Mr. Hamilton, Captain Tessier, and Mr. Welsman, one of the partners in the firm of Fraser, Trenholm and Company, with regard to the *Alexandra*. I think I have sufficiently proved that we qualified and gave a character to those persons, and established the undoubted fact that they were at Liverpool acting as the agents for the belligerent service of the Confederate States. Now the first witness that I will refer to is Acton, who is the watchman at Miller's yard, and whose evidence is at page 35 of the small book.

The QUEEN'S ADVOCATE. And 32‡ of the large book.

MR. ATTORNEY GENERAL. He is asked "Do you know a person of the name of Hamilton, a Mr. Hamilton?—I have seen him. Have you ever seen him in Messrs. Miller's yard?—I have. Have you ever seen him there during the course of the building of the vessel *Alexandra*?—Yes. Have you seen him there more than once?—Yes. Frequently?—Yes. Can you tell at all how often?—Yes, once a week or twice a week. Did he take any notice of the *Alexandra* (I do not ask you what) when he came into the yard?—Yes, a little. Did anybody come with him?—Yes. On those occasions?—Yes. Do you know the name of that gentleman?—Bulloch, I believe. Did they ever look at the *Alexandra* together?—Yes. More than once?—Yes." He did

* See page 60.

† See page 62.

‡ See page 18.

not know of their giving any orders. "Did you ever hear Mr. Hamilton speak to Mr. Miller upon the subject of the Alexandra? I do not ask you what he said; but did you ever hear him?—Yes. Did you hear him do that more than once?—Yes, once at least. Did you ever hear this person of the name of Bulloch, that you have mentioned, speak to Mr. Miller?—Yes. Upon the subject of the Alexandra?—Yes." We were met with all the objections that we could be as to evidence, and were very cautious not to ask questions which we did not think we ought to press.

Then I will go to page 36, the next page before the cross-examination.

The QUEEN'S ADVOCATE. It is 33* of the other book.

Mr. ATTORNEY GENERAL. "As to Mr. Bulloch and Mr. Hamilton when they came to the yard, how did they get in?—Through the yard gate. Who let them in?—Myself for one." The LORD CHIEF BARON says, "You mean they got in exactly like other people?"—I suppose his lordship meant people having business there. "Yes, just so." The QUEEN'S ADVOCATE. "Did they have an order or did they come in like anybody else?—They had an order from one of us. Was that the order usually given to everybody, or was it a particular order?—No." I do not know exactly what that means. "What was it?—Generally an order for them to go through, that is all. Was it the usual or was it a particular order?—Not a particular order." I suppose it means in the usual form. "LORD CHIEF BARON. Had the order anything to do with the Alexandra?—Not that I am aware of. Was it merely to let them into the yard?—To come into the yard." We find that they came once or twice a week, looked at the Alexandra, talked about her to Mr. Miller, and had a general order to be let in whenever they came; that I think is pretty strong. Then at page 37 of the same witness in his cross-examination, he is asked about these people, and he seems puzzled when he is asked a question about Bulloch; he describes him as a little man.

The QUEEN'S ADVOCATE. It is at page 35† of the larger book.

Mr. ATTORNEY GENERAL. "How do you know it was Mr. Hamilton who came?—I saw him. How do you know him?—I know him perfectly well. How do you know him?—I know him. Did you ever speak to him in your life?—Yes. What did you say to him?—I do not know." Then in his re-examination at page 38 he is asked, "Am I to understand that Mr. Bulloch never did, to you, give a name?" (it is quite clear that he was known by that name in the yard)—"No. Are you sure that he came with Mr. Hamilton?—I have seen him with Mr. Hamilton;" then he describes the sort of man that Bulloch was, "a little man with dark whiskers and beard." I will now go to the evidence of Carter. We shall now find the activity of Mr. Hamilton in the workshop of Messrs. Fawcett, Preston and Company—Carter's evidence—it is at page 46 of my book.

The QUEEN'S ADVOCATE. It is page 43‡ I think, of the other book.

Mr. ATTORNEY GENERAL. "While the machinery was being prepared," (he identifies it as the machinery intended for No. 2209, which was the number of the Alexandra,) "were you frequently at work at your business of a carpenter in the erecting shop?—Sometimes. Is that the shop where the machinery is prepared and fitted for the vessel?—Yes. While you were there did you ever see a gentleman of the name of Hamilton?—Yes. I have seen him there. Did you see him there frequently or seldom?—I have seen him there pretty often. When he was there did you see whether he paid attention, or did not pay attention, to the machinery?—I could not say that he did particularly to any branch of it; I could not see that he did to that branch of the machinery more than to another." Then the same witness at page 48 of my book is asked this, "Have you seen from time to time Mr. Hamilton with Mr. Sillem in the shop?"

The QUEEN'S ADVOCATE. It is at page 45§ of the larger book, the top of the page.

Mr. ATTORNEY GENERAL. He had been speaking just before of the guns and gun-carriages which were mentioned to your lordships. "Have you seen from time to time Mr. Hamilton with Mr. Sillem in the shop?—Yes. I mean at this time when the machinery and the guns were in preparation?—Yes. Have you at any time or times heard Mr. Sillem speak of alterations?"—Mr. Sillem, I think I told your lordships, is a partner in the firm of Fawcett, Preston and Company. "Have you at any time or times heard Mr. Sillem speak of alterations either in the screws of the gun-carriages or other matters connected with the guns, in Mr. Hamilton's presence?—I have heard him make the remark that he could make improvements in the compressor screws. You have heard Mr. Sillem say that to Mr. Hamilton?—Yes. That he could make improvements in the compressor screws?—That he had done so. What did Mr. Hamilton say upon that?—He thought it a great improvement upon the old original one. He said that?—Yes, LORD CHIEF BARON. In the lock?—No, the compressor screws." Then there is the evidence of Hodgson, at page 55; he was also in Messrs. Fawcett, Preston and Company's service; it begins at the bottom of page 54 in my book; he is the packer. "Do you know a person of the name of Hamilton?—Yes. Did you ever see him there?—Yes."

The QUEEN'S ADVOCATE. It is at the bottom of page 51¶ of the other book.

Mr. ATTORNEY GENERAL. "Whom was he with?—Sometimes alone, and sometimes

* See page 19.

† See page 20.

‡ See page 24.

§ See page 25.

¶ See page 29.

with Mr. Sillem, and sometimes with Mr. Mann," (Mr. Mann is another member of Messrs. Fawcett and Company's firm,) "but he was more often with Mr. Mann." We asked what he came about, and Sir Hugh Cairns interrupted by saying, "That is not the proper question; what did he say or do?" Then I asked, "Do you recollect anything he said in their presence in the packing-room?—No. Do you remember anything he ever did in their presence?—No, except examining the shot and shell. Did he talk to them about it?—Mr. Sillem and Mr. Hamilton were talking about it, I could not understand what they said. Have you ever seen Mr. Hamilton at Miller's yard?—I met him coming along the yard. Do you recollect anything Mr. Sillem ever said to Mr. Hamilton? When he spoke to him what did he call him?—I never heard him say anything. Do you recollect anything being said about the clench rings that were being made for this ship; did Mr. Hamilton speak to any of the partners or to Mr. Speers?" The answer is, "Mr. Hamilton has been down to Fawcett, Preston and Company's premises, and as soon as he has gone away there has been an order to get these things ready." SIR HUGH CAIRNS says, "Listen to the question; did you ever hear Mr. Hamilton say anything to the partners on the subject of the clenches?—No. The SOLICITOR GENERAL. Were any orders given after Mr. Hamilton came to the yard concerning these clenches?—Yes. The LORD CHIEF BARON. By whom? The SOLICITOR GENERAL. By any one of the partners?—Yes, to get these up to the boat; they were in a very great hurry for these clenches and bolts at that time. Do you recollect when these orders were given? SIR HUGH CAIRNS. Was this by Sillem or by whom? the manager, Mr. Speers?—Yes. The SOLICITOR GENERAL. Do you recollect in what terms the orders were given?—To see for bolts and clenches and take what was ready to the yard at once. Were those orders given immediately after a visit from Hamilton?—Yes, on one or two occasions. As soon as he had gone? Yes. Did you take the clenches and bolts yourself?—Yes, I did. In consequence of that order?—I suppose so." So that we have seen him with Captain Bulloch twice a week in the yard looking at the ship. He is seen in the yard by this witness, he comes and looks at the machinery as well as the guns and the shot and the shell, and then he talks to the partner in the presence of the witness; he does not hear what is said, and then immediately after his going, more than once orders are given in a great hurry to take to the ship some of these articles necessary for fitting them out.

At page 59 there is one other passage in the evidence of this Mr. Hodgson. He identifies by their number all the machinery, clenches, and bolts made for the Alexandra by the number 2209. "Did you ever see Mr. Hamilton inspecting that machinery while it was being made?"

The QUEEN'S ADVOCATE. That is at page 56.*

MR. ATTORNEY GENERAL. "Did you ever see Mr. Hamilton inspecting that machinery while it was being made? Yes, I have seen him inspecting it." Then Robinson is examined at page 43.

The QUEEN'S ADVOCATE. That is at page 40† in the large book.

MR. ATTORNEY GENERAL. Robinson was a joiner, and he was in Fawcett and Company's shop making the gun-carriages. He is asked, "While you were so employed did Mr. Hamilton come to the premises?—I have seen him at times, several gentlemen. I was just asking at present about Mr. Hamilton; did he come in company with anybody else, will you tell me?—I have seen a gentleman called Mr. Hamilton. Did he come there while you were making these gun-carriages?—Yes. Did he inspect the making of the gun-carriages?—Merely looking at them." That just confirms it and goes to the same point.

My lords, I now come to the evidence of a person named Da Costa; perhaps before I read it I may mention a circumstance slight in itself, but assisting in the connection of these facts, namely, that the witness Hodgson at page 60 speaks of very frequent communication at this time by notes and letters between the two firms of Fawcett, Preston and Company, and Fraser, Trenholm and Company.

The QUEEN'S ADVOCATE. It is at page 56‡ of the larger book.

MR. ATTORNEY GENERAL. His evidence is this: "At that time were you sent to carry letters?—Yes. To what firms?—To firms all over Liverpool. Among others did you carry any from Fawcett and Company to a firm named Fraser, Trenholm and Company?—Several. Was the communication frequent between those two firms?—Yes. And you often had to carry those letters?—Yes, very often."

I now come to the evidence of Da Costa; and first of all, I will give your lordships what Da Costa states as to the interference in his presence of Welsman, a partner in the firm of Fraser, Trenholm and Company, and Captain Tessier with regard to the ship. They are single acts, but acts which could only be referred to an interest which they had in her, or a control and authority which they had over her. The first is at page 94 of my copy.

The QUEEN'S ADVOCATE. It is at page 91 of ours.

MR. ATTORNEY GENERAL. This gentleman, Mr. Da Costa, is a partner in a steam-tug and a shipping agent. My learned friends represented him by a less complimentary word; they called him a crimp, but I may say that I never saw a better witness in the

* See page 31.

† See page 23.

‡ See page 32.

box. He appeared to me to be a very straightforward, honest, and consistent witness, and was not shaken the least in the world by cross-examination on any point. It is easy to call a man names. He seems to be perfectly respectable, and the firm of Miller and Sons had been building for the company in which he was concerned a ship or tug called the *Emperor*, which was launched and had a trial trip; and that is what brought him into communication with them and about their yard. He says this at page 94 of my book.

THE QUEEN'S ADVOCATE. It is at page 90* of the other book.

MR. ATTORNEY GENERAL. He is asked, "Do you know Mr. Welsman and Captain Tessier?—I know Captain Tessier quite well, Mr. Welsman only slightly. Do you know him by sight, Mr. Welsman, I mean?—Yes. Did you ever see Mr. Welsman in Mr. Miller's yard during the time when the *Alexandra* was building?—I did. **LORD CHIEF BARON.** Did you see Captain Tessier?" (there was some observation which intercepted the answer.) "Is Mr. Welsman a member of the firm of Fraser, Trenholm and Company?—He is. They are merchants at Liverpool, I believe?—Yes. Did you see him there more than once?—Yes. Did he do anything when he was there?—I saw him giving orders for one of the men to work at this boat. That is the *Alexandra*, you mean?—Yes. Did you see him doing that more than once?—The order, that was only once. Did you see him doing anything else besides giving orders?—He was always inspecting round about. Always inspecting, do you say?—When I saw him." That is very clear and direct evidence, except there be anything to discredit it, of the interference of Welsman by giving orders as a person having an interest. Then the witness is asked, "Do you know Captain Tessier, I think you said you did?—Quite well. Have you seen him during the time the *Alexandra* was being built?—Yes. More than once?—Yes. Have you seen him there frequently?—Yes. Have you heard him give any orders respecting the gunboat?" (this witness had throughout called the *Alexandra* the gunboat.)—"I did not hear him give any orders. Have you seen him do anything?—He was always about her superintending." Then I pass over one or two questions. At page 103, I think, he speaks of a particular act done by Captain Tessier. There is a discussion. He is asked as to something which was said by Captain Tessier to Mr. Miller the elder, who was the undoubted owner of the works. There was a little discussion about the evidence which I pass over. The Lord Chief Baron held that he must admit the evidence, and then the question at page 103 is, "Tell us what he said with reference to the construction of the *Alexandra*." This was to Mr. Miller. "He wanted" (that is Tessier wanted) "the combings of the hatch higher. That is what he said?—Yes."

THE QUEEN'S ADVOCATE. It is at page 96† of the larger book, my lord.

THE ATTORNEY GENERAL. "Did he say how much higher he wanted them?—Three inches, I think it was. Of what hatch?—The main hatch. Did Mr. Miller, senior, make any answer?—He did. What did he say?—He said he would not do it; it was according to contract." That meant, as I understand, that what was done was according to contract. So that Captain Tessier was constantly there inspecting like these other people. Then he expressed his wish that a particular change should be made, to which Mr. Miller objected, that what had been done was according to the contract.

Now the same witness, Da Costa, gave evidence as to the more direct statement made to him by Miller, while the ship was in his possession and in progress, as to the intent and the purpose. There was a long discussion about the admission of that evidence; it was eventually admitted upon consideration and was before the jury. At pages 92‡ and 94 of my book there is that part of the evidence. He is asked at the top of page 92, "Do you remember a short time before the *Emperor* was launched having a conversation with Mr. Miller, senior?—Yes." The *Emperor* was the ship or tug which Mr. Miller was building at that time for the company of which this witness was a partner. "When was the *Emperor* launched?—On the 6th day of January, 1863. You say you remember having a conversation with him, and now I ask you what that conversation was? **SIR HUGH CAIRNS.** Do not answer. My lord, that would be a question to which we object, and your lordship perhaps will be good enough to take a note of it. **THE QUEEN'S ADVOCATE.** Perhaps I had better put it: Had he a conversation with you about the *Alexandra*?—Several times. Now, then, I will ask you further. You had a conversation about the *Alexandra*?—Yes. Did he in the course of that conversation say anything to you as to what the *Alexandra* was intended for?—On three different occasions." Sir Hugh Cairns objects to the question, and the Queen's advocate says, "Now answer my question. Did he in the course of that conversation tell you what she was intended for?—He did. What did he say?—He told me she was a gunboat for the southern confederacy."

THE QUEEN'S ADVOCATE. This is at pages 87 and 88§ of the larger book.

MR. ATTORNEY GENERAL. Did he say anything to you at that time about a contract for the *Alexandra*?—He did, my lord; must I give you the exact words that passed? **LORD CHIEF BARON.** Give us the best of your recollection of what passed. **THE QUEEN'S ADVOCATE.** The question is, Did he say anything to you then about a contract

for the *Alexandra*?—He said 'We' (that is Millers') 'conjointly with Messrs. Fawcett, Preston and Company, are building this vessel for Messrs. Fraser, Trenholm and Company.' Did he say for whom?—They were the agents for the southern confederacy." Mr. Miller had a conversation with this witness on three different occasions as to what the *Alexandra* was intended for. "He told me that she was a gunboat for the southern confederacy." "He said, 'We conjointly with Messrs. Fawcett, Preston and Company, are building this vessel for Messrs. Fraser, Trenholm and Company.'" "Did he say for whom?—They were the agents for the southern confederacy. SIR HUGH CAIRNS. Did he say that?—Those are the words he said. The QUEEN'S ADVOCATE. What did he say?—They were the agents; in the conversation which took place, he several times said so. In the conversation that took place he said several times that they were the agents for whom?—For the southern confederacy. Had you any other conversations with him about the *Alexandra*, and for whom she was intended?—Yes, certainly. What did he say at those other times?—It was the same sort of thing. LORD CHIEF BARON. It was to the same effect?—Yes."

Then a little later he speaks of a conversation at another time, at the bottom of page 93, about certain blocks to lay the keel of a gunboat early in the time of the construction of this ship, when I suppose she was first being laid down. He is asked, "Did you afterward see any vessel upon those blocks which he pointed to?—Yes. What vessel?—The *Alexandra* that is now. Do you remember having a conversation with Mr. Miller upon the subject of the *Alexandra* in November, 1862?—I do. Do you remember whether he said anything about the name of the vessel on that occasion in November, 1862?—He did. What did he say?—*Alexandra*. Tell me what he said?—He said that the vessel, the gunboat, was to be called the *Alexandra*. Did you ask him any question why she was to be called the *Alexandra*?—I did. What was the question?—I asked him was that the name of some State or city, and he said it was. Did he say where it was?—He said it was in the southern States; I think that was the word. Did he say anything about its agreeing with any other name?—He said it was in unison with the Alabama and the Florida." Then a little while after he is asked "Do you remember at any time his saying anything to you about a gun in connection with the *Alexandra*, or guns?—Nothing; only gunboat, that is all."

My lords, I have said it, and I repeat it, that in the cross-examination of this witness nothing was elicited from him, which either in word or in manner shook his credit the least in the world. The evidence was given in a manner perfectly open and straightforward, and I say that he is a witness who is not discredited in any way whatever, but he is accredited by the facts, by the superintendence and the interference of these persons. The orders given by Welsman, of the firm of Fraser, Trenholm and Company, exactly consistent with the proposition that Millers are building this vessel conjointly with Fawcett, Preston and Company, under a contract with them as agents for the Confederate States; the superintendence proved of Hamilton and Bulloch, who are the proved agents of the Confederate States, and the ship being called a gunboat by Fawcett and Company themselves.

Now, my lords, I do submit that upon that uncontradicted state of evidence, no evidence whatever being produced upon the other side, the jury, unless it were to be explained as it is to be explained by the manner in which they were directed in point of law, would have wholly miscarried in not finding a verdict for the Crown, and I do not submit that it is against evidence. Of course, in order to prove that, I must go to the other branch of the question, namely, the law to which that evidence is to be applied. But if I am right in my view of the law, I take it to be quite plain that upon that uncontradicted evidence it is proved that the ship which was being built and constructed to be used as a gunboat was in course of equipment, furnishing and fitting out; that all the people named for that purpose in the information were aiding and abetting, or attempting and endeavoring to equip, furnish, and fit her out, to the intent and for the purpose that she should be employed by those who ordered her, by those for whom she was being built, namely, the Confederate States. My lords, the explanation of the verdict which was given will be perfectly plain to your lordships when I come to read the summing up of the learned chief baron. If I had been in the jury-box, if any one of your lordships had been in the jury-box, owing the duty which a jury does to the judge, who instructs them in the law, I should have instantly felt that there was no question left for me, that my opinion was not asked, that I was told to withdraw my mind from the consideration of the incidence of this evidence as to the intent, the service, or the purpose for which the vessel was being fitted up; I was told that she was not being fitted up at all, that she was not being equipped at all, that she was not being furnished at all, and that nobody was attempting to equip or furnish or fit her out according to the act, and that therefore the question of fact did not arise. That was the manner in which the jury were directed, and the jury had no option under such a direction but to find the verdict which they did find. But I say that if the jury had been properly directed, the evidence which I have read, met by no counter evidence, was evidence upon which the Crown were entitled to a verdict, and that the

verdict which has been given in the face of such evidence is a verdict which ought not to stand.

My lords, I am fully aware that I must address myself to the act of Parliament to show that I am right in my view of the effect of the evidence in connection with that act. My lords, the act of Parliament must be looked at in its entirety; we must look not only at the particular clause, but at the other parts of the act which can throw light upon the object and purpose of the legislature in passing it; and, in that point of view, it is not at all unimportant to attend both to the preamble and other clauses, which, relating as they do to a different offense, yet illustrate the general object and policy for which this act was passed. And, I say, the general object and policy of the act was to enable the Crown, with regard to the particular subjects which are mentioned in it, to enforce within the territories of the Crown as against the subjects of the Crown that neutrality which it professed as to government; that there are many things as to which governments do not attempt by law to enforce upon their subjects the neutrality which they themselves profess, but that there are other things as to which, for the peace of the kingdom and for the honor of the nation, it is important to provide against such infractions of neutrality by subjects within the realm, or by foreign belligerent governments using the agency of its subjects within the realm, as, if permitted to go on and to grow to a large scale, will have the inevitable tendency, whatever may be the technical rules laid down by writers upon international law, to involve nations in war with each other, and to damage and discredit the good faith of the country whose government, professing neutrality, permits its shores and its ports to be used as arsenals for other belligerent countries which have none of their own, in order that war may be carried on practically, direct from those ports, upon the high seas against other nations. And therefore this act strikes at two classes of things always contraband, and always in that sense against the law of nations, so that it may visit them with such punishment as the belligerent suffering from them would have it in his own power to inflict, but neither of which, until the passing of this act, was considered to be against international law in this sense, that the government permitting them was to be held guilty of a breach of that law because it did not restrain them, yet it was found impossible to maintain really friendly and neutral relations, and to secure the majesty and the dignity of the British Crown from being violated and insulted by the acts of foreign belligerent governments, violating its own neutrality by the agency of its own subjects, unless these things were prevented; it was therefore thought necessary to take out of the general category of contraband dealings the particular class of dealings contained in this act, and to say the law of this country will not permit them. What are those two classes? The enlistment of men and the equipping, furnishing, or fitting out of ships.

Now, before this act of Parliament was passed, or rather before the acts were passed which preceded it of the same kind, the general law of nations no more threw upon the government of a particular country the obligation to prohibit or to prevent the enlistment of its men in a foreign belligerent service than it did the obligation to prohibit the equipment of ships within its ports. It was always a thing which was done, and we know that it was done upon a great scale, if we travel out of the right field of legal argument into other sources of information. We know from great authorities what was done in the time of Queen Elizabeth, and on the Continent of Europe, and that there was a protest for the first time against the right which it was supposed any subject would have to take service wherever he pleased. But this act is directed against those things I have already mentioned, and that to some extent as to the enlistment of the men; it had been preceded by similar acts, and it may be in your lordships' recollection that those similar acts were found defective in this respect, that they did not deal with any case but the case of service taken under a recognized government, whereas at the time when this act was passed the war in which this country stood neutral was between the insurgent provinces of Spain in South America and the mother country, those insurgent provinces not having acquired the status of a recognized government, and therefore not being hit by the precise words of the older foreign enlistment act, which related to men alone. In that state of things this act is passed "to prevent the enlisting or engagement of his Majesty's subjects to serve in a foreign service, and the fitting out or equipping in his Majesty's dominions vessels for warlike purposes, without his Majesty's license." That is the title which, as his lordship observed at the trial, does not legally enter into the interpretation of the act. The preamble is this: "Whereas the enlistment or engagement of his Majesty's subjects to serve in war in foreign service, without his Majesty's license, and the fitting out and equipping and arming of vessels by his Majesty's subjects, without his Majesty's license, for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom." My lords, the disjunctive word "or" which we find in the seventh clause does not occur in that preamble, but I think it is perfectly manifest that the "and" has

exactly the same force there as if it were a disjunctive word; that is to say, that each of these things, if not prevented, will be prejudicial to and will tend to endanger the peace and welfare of the kingdom—first, the enlistment or engagement of the subjects to serve in war in foreign service; 2dly, the fitting out of vessels; 3dly, the equipping of vessels; and 4thly, the arming of vessels. The conjunctive instead of the disjunctive form in the preamble is exactly appropriate, because all those things and every one of them is within the mischief which the statute is intended to prevent. When we come to the seventh clause, the object being to strike every one of them *separatim*, the conjunctive is turned into the disjunctive.

Mr. BARON BRAMWELL. Clearly that is so; otherwise you must make the whole conjunctive, and then it would read that no offense would be committed unless you at the same time enlisted and fitted out a vessel, which cannot, of course, be.

Mr. ATTORNEY GENERAL. It cannot possibly be.

LORD CHIEF BARON. All those four matters, fitting out, equipping, and so on, are, I think, to be prevented disjunctively, and unless I had so thought I ought to have stopped the prosecution at once, because there was not a count in the indictment which complained of either arming or attempting to arm.

Mr. ATTORNEY GENERAL. If we took it that all the words meant the same thing, of course any one word would answer the same purpose. In the preamble, however, the disjunctive "or" is made into a conjunctive, and I will show that each of the things is within the mischief, and therefore all are mentioned.

Mr. BARON BRAMWELL. One is and the other is.

Mr. ATTORNEY GENERAL. Yes, my lord. Then I beg your lordships' attention to what is the mischief. The mischief is obviously what is expressed, namely, that this "may be prejudicial to and tend to endanger the peace and welfare of this kingdom." I am sure that when my lord comes to be reminded of a passage in his summing up, in which that view was stated, which, under the influence of the powerful arguments which he had heard, he at that time held to be the right one, of the object of the statute, he will not recognize his own words as expressing the meaning which he said he had intended to enunciate, so different is it from the language which we find in the statute. His lordship, according to the natural meaning of the words, says that the object of the statute is only to prevent collisions.

LORD CHIEF BARON. My impression was that the object of the statute was to prevent any hostile vessel being fitted out and equipped, so as to make a port of this country the port of discharge, the commencement of a hostile operation.

Mr. ATTORNEY GENERAL. I knew that your lordship would not adhere to what I find in the short-hand writers' notes upon that subject, because what fell from your lordship was this, that the mischief apprehended was, that there might be building in Messrs. Miller's yard a ship for the confederates, and in Messrs. Laird's yard another for the federals, and that on coming out they might come into collision one with the other, and produce hostility upon our waters.

LORD CHIEF BARON. There can be no doubt that that was one of the mischiefs which were intended to be guarded against.

Mr. ATTORNEY GENERAL. I take the liberty of saying to your lordship that I do not think that such a thing ever entered into the mind of any human being, because, so far as I am aware, it never happened before. It would not be the object of either party to get into war with this country; they would take care not to violate one of the commonest rules of international law, namely, to get outside neutral waters before commencing hostilities.

LORD CHIEF BARON. I think you will find in Kent's Commentaries something to the effect which I have stated.

Mr. ATTORNEY GENERAL. No; nothing of the kind, I assure your lordship.

Mr. BARON PIGOTT. I think I have read something to the same effect in some other writer, that it may lead to those consequences.

LORD CHIEF BARON. And the fact in point of history has taken place.

Mr. ATTORNEY GENERAL. I do not say that it is impossible.

LORD CHIEF BARON. It is not only not impossible, but it is a fact.

Mr. BARON PIGOTT. Was not it nearly happening in the very case of the confederate and the federal vessels in this country? Did not we stop the one at Southampton in order that the other might have a run?

Mr. ATTORNEY GENERAL. What might possibly happen would be that the one might follow the other if not prevented.

Mr. BARON PIGOTT. Did not we do that for fear they should come into collision within British waters?

Mr. ATTORNEY GENERAL. They would not come into collision within British waters; one might have followed the other out of port, and for that reason a special order was made by her Majesty in council. That of course has nothing to do with the foreign enlistment act. All I can say is this, that without saying that such a thing is not theoretically possible, yet to state that that is the object and policy of this statute as declared upon the face of it, would, I think, be taking a liberty with the law which it does not belong to any court to do. It is plain that the object was to preserve the neutrality of this country, and to enforce it against the subjects of this country, in mat-

ters in which the neglect of it by those subjects, or the violation of it here by foreign belligerent governments, was thought calculated to lead to a position as regards foreign nations which would endanger the peace and welfare of the kingdom. How would it endanger the peace and welfare of the kingdom? Manifestly by involving us in war, by making us practically so far parties through our subjects to belligerent operations if we allowed this country to be made the base of those operations, either for the enlistment of men or for the equipping of vessels of war, as to make it probable that other countries would not endure it, but resent it, and that so we might become involved in war. That is the mischief which the statute is manifestly intended to protect us against.

Then the second clause, as to enlistment, your lordships will find is one which prohibits any natural-born subject of the Crown anywhere, I think, from enlisting or entering himself or serving "in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out or equipped or intended to be used for any warlike purpose in the service of, for, or under or in aid of any foreign power." It is quite manifest that, under that, the mere taking an engagement on board a vessel of any sort or description used or intended to be used for any warlike purpose is equally struck at as taking an engagement on board a vessel which is of a particular class.

Then I pass over the penalties affixed to taking service in that way by the enlistment clauses, and the mode in which those penalties are to be proceeded for, and I come to the seventh clause. It is quite manifest that the enlistment of men in this country to serve in and on board any ship used for the warlike purposes of a foreign nation could not have any other tendency to involve this country in war than by leading to a breach of friendly relations with the country who suffered by that sort of enlistment. The seventh section, with which we are dealing, is, I should have thought, though rather involved and intricate in its language, most carefully expressed, so as to include every species of case which can come within the mischief, and not to enable any one to escape from the case being brought within the mischief which is sought to be prevented or the intent which is prohibited. The words are these: "If any person in any part of his Majesty's dominions shall, without the leave and license of his Majesty for that purpose first had and obtained, as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm." Now, first stopping at the words "any person," it is quite obvious that it may or not be a subject of the Crown. When the enlistment was spoken of only natural-born subjects were prohibited from enlisting. When the procuring persons to enlist was spoken of, any person within his Majesty's dominions was prohibited from doing so, and here we have any person, whether a natural-born subject, or, like Captain Bulloch and Mr. Hamilton, a foreigner, and, *à fortiori*, the British government acting by its agents, they would be the persons of all others whom the act would intend to prohibit, because they are directly violating our neutrality by using our shores and our ports for such a purpose. The statute provides against any person doing any one of these things; it being in the disjunctive, it distinguishes them, and seems to be carefully worded in order to avoid the chicanery which would result from requiring some particular species of furnishing, some particular species of fitting out, some particular species of equipment, in order to make the act penal in a case in which the attempt is proved. I say that the whole gist is there, is the intent and the purpose, and that any species whatever of equipment, however innocent *per se*, any species whatever of furnishing, any species whatever of fitting out, whether with or without arming, is struck at by the act, by its plain words, according to their natural meaning, and are necessary, and that, I apprehend, is their object and policy, provided always that the intent and purpose is established. Now what are the words? "Equip, furnish, fit out, or arm." If it had stopped there, of course it would not have had the effect of prevention. The statute of course aims at prevention, not at punishment when the thing is done. The statute desires to stop the thing *in limine*, to cause the thing not to be done, and therefore, instead of stopping at these words, it goes on "or attempt or endeavor" to do any one of these things, so that, however little progress may have been made, and in whatever imperfect condition the ship may be as to these things when she is seized, if any step has been taken which is an attempt or endeavor it is sufficient; any attempt or any endeavor to do any one of these things, provided it be a prohibited attempt, is struck at, and not only the attempt or endeavor but any one who "shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming." Now that is a clause which is remarkable, because it strikes at the case of a person within her Majesty's dominions, knowingly aiding, assisting, or being concerned in the equipment, whether or not the equipment takes place *quoad alios* elsewhere. Any person who does any one of these things within her Majesty's dominions offends against the act, that is to say, any one who equips, who attempts or endeavors to equip, who procures to be equipped, or who knowingly aids, assists, or is concerned in the equipping, wherever the equipment is completed, and whoever be the person by whom it is made. Then what is the intent? "With intent or in order that such ship or vessel shall be employed," not by any particular person, but "shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of

any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people as a transport or storeship," in which case of course it would not have arms at all, its equipments would be of another character; "or with intent to cruise, or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate," and so on.

My lords, I look in vain in that clause for any warrant whatever for some distinctions which have been arbitrarily imported into it by some persons who seem to think that this clause makes exceptions in favor of shipbuilders, and in favor of mercantile dealings and objects, and that if they take money for the prohibited thing, if they enter into a contract with a person to do it and are paid, it takes them out of the scope of the statute, although they attempt or endeavor, or knowingly aid, assist, or are concerned in the equipment. The statute makes no such distinction. The statute strikes every person, a shipbuilder or an engineer, like Messrs. Fawcett, Preston and Company, as much as anybody else; it strikes a person whether he does it under a contract or whether he does it without a contract, whether he does it for money or whether he does not do it for money, provided he does the prohibited thing, and that prohibited thing is either equipping, or attempting or endeavoring to equip, or knowingly aiding, assisting, or being concerned in the equipping, with a certain intent. The intent is the gist of the whole thing, and that is the thing to be proved.

Now I observe here, what I shall have occasion to show more completely hereafter, how very great is the fallacy into which it is possible to fall when dealing, without due attention to the language of the statute, with distinctions rightly laid down, in some cases as to mercantile adventures in ships of war which are not prohibited; of course there may be a mercantile adventure which is not prohibited, but it must be a mercantile adventure as to which the thing is not done with a prohibited intent of course, in order that there should be the intent that the vessel shall be so employed there must be some person party to the business who is capable of having such an intent; and who is it? For example, if a shipbuilder in England builds on speculation on his own account a ship, intending to take it to any port in the world where he can find a market for it, it is obvious that he has not within her Majesty's dominions any intent to employ or any power to employ the ship in the service of any belligerent power; all his intent is to sell the ship to a purchaser somewhere or other, or it may be in some particular place, if he can find one there, and nobody but himself has any control over it at the time. Nobody but himself has anything to do with it at the time, nobody but himself, under the circumstances, can determine the intent, and as he does not mean to make war in it himself, or does not intend that any one else shall make war in it, that is not struck at by the statute. But wherever you have parties concerned in the equipping or fitting out or furnishing, or the attempting or endeavoring to do any of these things, either as shipbuilders or as engineers, aiding in any way whatever in any of them, where there is a principal in the matter who has the intent and is master of the employment, can there be any doubt whatever that it is struck at by the statute? For instance, suppose they constructed the vessel meaning themselves to use their own ship as a privateer. That is what was put by my learned friend Sir H. Cairns in his argument at the trial, as if that was the only thing which the statute meant. That covers fitting out, because a man who is building and fitting out a ship has it in his power to make a particular thing of her. But supposing he is building her under a contract, supposing the ship is ordered by the belligerent government itself, (and that is the case to which this evidence points,) can any one possibly say that this statute does not strike at the case in which a belligerent government gives an order to a merchant in Liverpool to equip a vessel for them and to take her to sea as a ship of war of theirs? And the merchant at Liverpool knowing fully that that is the purpose for which the ship is employed, which the very character of the employment proves, is not the merchant as much guilty, is not the shipbuilder as much guilty, is not the engineer as much guilty as the agents of the confederate government who are violating the neutrality of the country in the first instance?

Now all this was totally lost sight of at the trial; nay, doctrines entirely inconsistent with it were laid down, and I say that unless your lordships are to make law instead of interpreting it, unless you are to deviate from the plain language of this statute and the natural meaning of its words for the sake of destroying its effect, for the sake of preventing it from checking and suppressing the mischief, you must say that any species of furnishing, any species of equipment, any species of fitting out, with or without arms, provided it be done with this intent, which I agree must be a fixed intent of a person capable of having the intent and assisting in that intent formed within this country, if you have that intent proved, (and you have evidence to prove it here,) this is a case which the statute strikes at, and you may as well drop the whole act out of the statute-book if it does not.

Mr. BARON BRAMWELL. Just let me tell you a difficulty which has occurred to me with reference to this act of Parliament—not at the present moment, of course. The words are, "equip, furnish, fit out, or arm with intent that such vessel shall be employed as a transport or store-ship, or with intent to cruise or commit hostilities."

The equipping therefore must be either as a transport or store-ship, or with the intent to cruise or commit hostilities. So also must be the furnishing, fitting out, or arming. It may be said that in this case there was no reasonable evidence upon which the jury could find that this vessel was equipped as a transport or store-ship, therefore you may leave those words out. Then it may be said that there was no equipment of her of such a kind that she could cruise or commit hostilities, and that therefore that part of the intent fails to be made out. Now I understand that to be a difficulty which has been felt in the construction of this act of Parliament, and I throw it out for your consideration if it has escaped you.

MR. ATTORNEY GENERAL. I am very much obliged to your lordship. It has not escaped me; but my answer is this, that the act is intended to prevent and not to punish; steps which are being taken to that end are steps which, if taken with that intent, are as much against the act as the completion of those steps would be. It is perfectly plain that the ship was meant to be completed in some way or other; she was in course of equipping; she was in course of furnishing; she was in course of fitting out, and if the evidence was such as to show that her object and purpose was to be employed as a war ship, it is clear that she would be completed for that purpose, and that any equipments not yet given which were necessary for that purpose would be added at one time or another, the whole being in pursuance and in completion of one and the same intent; and an authority in the United States, to which I shall have occasion to refer, at all events has distinctly laid it down that it is not at all necessary that the entire equipment, without which the ship cannot be effectually employed upon this service, should be made in this country, provided that any part is made here.

MR. BARON CHANNELL. Do you say that the statute points to something incomplete?

MR. ATTORNEY GENERAL. The words "attempt or endeavor" plainly point to something which is incomplete.

LORD CHIEF BARON. Suppose the case of the building of a mere hull with the intention that it should be towed away across the Atlantic by a tug, and suppose that there was some confederate port open, which there is not, that hull being incapable in that state of being used for any purpose whether of merchandise or war, do you mean to say that that would be illegal?

MR. ATTORNEY GENERAL. That would raise an entirely different question.

LORD CHIEF BARON. Would it be illegal?

MR. ATTORNEY GENERAL. I will assume for a moment that it is not illegal.

LORD CHIEF BARON. I am bound to say that if it be illegal you would be entitled to your rule at once, because no doubt I meant to lay down distinctly that the mere hull of a vessel, in no condition fit for any use whatever, might be made and sold at Liverpool to anybody.

MR. ATTORNEY GENERAL. My case does not in the least degree require that I should argue the case imagined by your lordship, which is obviously not one which is very probable and practical, would be brought within the words, "equip, furnish, fit out, or arm."

LORD CHIEF BARON. The court will adjourn for a short time.

[After an interval,]

LORD CHIEF BARON. Mr. Attorney General, we have availed ourselves of the opportunity of the court adjourning for a short time to consider the matters which you have brought before us; and without in the least saying what the opinion of any member of the court is as to the ultimate fate of the rule, I certainly, for one, and I believe all my brothers are of the same opinion, think that what you have stated is unquestionably matter fit to be discussed. If, therefore, you are content now to take a rule to show cause why the verdict should not be set aside as being contrary to the evidence, or as not being warranted by the evidence, being contrary to the weight of it, and on the ground of misdirection on the part of myself at the trial, or on the ground that though there might be no positive misdirection, there might be such a want of information furnished to the jury as not to enable them fairly to discharge their duty—if you are contented to take a rule upon those two grounds, dividing the second into either positive misdirection or imperfect direction, you may take a rule to show cause at once.

MR. ATTORNEY GENERAL. I thank your lordship; that is what I have been asking your lordships for, and of course, being told that I may have it, I have no more to say.

LORD CHIEF BARON. Very well; take a rule to show cause.

MR. ATTORNEY GENERAL. My lords, my learned friends remind me that it will be necessary in drawing up the rule to state the grounds of the rule.

LORD CHIEF BARON. I hope that I am not wrong in this. I believe that you may take the rule precisely in the terms which I have announced. If you like to put it more shortly as misdirection or imperfect direction, you can do it.

MR. ATTORNEY GENERAL. That is very satisfactory to me, my lord.

MR. BARON CHANNELL. We understand that that will include the incomplete information.

LORD CHIEF BARON. Perhaps you had better take it in the language in which I pronounced it when I addressed you just now.

Mr. BARON PIGOTT. Misdirection enables the court to mold the meaning of that word by-and-by; misdirection is understood, but non-direction is not recognized as a ground for a rule.

Mr. ATTORNEY GENERAL. If that is so technically, of course we are quite satisfied to abide by the proper form.

Mr. BARON BRAMWELL. There can be no doubt that it must be stated wherein the misdirection consists; but surely there will be no difficulty about it; Mr. Jones will attend to that.

Mr. JONES. It is only with reference to the terms of the rule of court upon the subject. If we go into the court of error they will say, "You ought to have specified it."

Mr. BARON BRAMWELL. If there should be any difficulty, I daresay that myself, or one of my learned brothers, will settle it.

LORD CHIEF BARON. I may state to you, Mr. Attorney General, that I imagined that I had taken pains, and I hoped that I had laid down the law as I understood it to be laid down by the highest possible authority, at least now, in what is called "another place;" some people call it "another place."

Mr. ATTORNEY GENERAL. Your lordship may be aware that any authority to which your lordship may be referring, is incapable of defending himself here as to what he has said in another place, or vindicating that from misinterpretation.

LORD CHIEF BARON. I thought that I was remarkably safe in taking that course. After all I may have been wrong.

Mr. ATTORNEY GENERAL. If I can divine the sentiments of any person to whom your lordship may be alluding, I may take the liberty of saying, that I understand that person to have vindicated the conduct of his own government in that other place; and at the same time to have said, that in his judgment, although it may not be infallible, the Alabama had offended against the law of the land.

[After a short interval,]

Mr. ATTORNEY GENERAL. My lords, I have received from the officer of the court an intimation which I am afraid makes it necessary for me to refer again to a subject which I thought had been disposed of. I am informed that the grounds of misdirection must be stated on the brief.

Mr. BARON BRAMWELL. Yes.

Mr. ATTORNEY GENERAL. I am quite content to state those which we conceive to be the grounds of misdirection, if that is meant.

Mr. BARON CHANNELL. The technical mode of drawing up the rule would be, that there was misdirection in this, then mentioning what you suppose to have been the misdirection; and if the court has granted you the rule on the ground of incomplete or imperfect direction, then to state the grounds of that incomplete and imperfect direction.

Mr. ATTORNEY GENERAL. We shall be at liberty to state that in our own way!

Mr. BARON CHANNELL. Yes.

LORD CHIEF BARON. Mr. Attorney General, the terms of the rule, of course, should be submitted to the court before the rule is granted. There will be no difficulty about that. I have no doubt that Mr. Jones will so frame it that either the court will assent to it, or he will assent to what the court suggests as the mode.

Mr. BARON BRAMWELL. Of course, Mr. Attorney General, as I understand, we cannot possibly allow a rule to be drawn up saying that the chief Baron misdirected in this, when he says that he gave no such direction; of course we cannot do that.

Mr. SOLICITOR GENERAL. There is the difficulty.

Mr. ATTORNEY GENERAL. What I had proposed was to have extracted verbatim from the short-hand writer's notes certain passages to which we should object, which probably would not be excepted to. I have made a division into six heads of the language as it stands on the short-hand writer's notes; and I should have been disposed to have placed every one of them upon the rule.

LORD CHIEF BARON. I will see Mr. Jones upon the subject if necessary.

Mr. BARON CHANNELL. There will be no difficulty about it.

Mr. SOLICITOR GENERAL. I rather understood from your lordships, if I may be allowed to say so, that in this particular case you would allow the rule of practice to be somewhat modified by a more general statement than usual.

LORD CHIEF BARON. We will see whether that can be done.

Mr. SOLICITOR GENERAL. Very well, my lord; we will try what we can do.

LORD CHIEF BARON. It should be observed, and it may be quite right that I should state it in public, that when the attorney general presented to me the paper I made the instant objection to it which I have made all along.

Mr. ATTORNEY GENERAL. Yes, my lord, we are quite aware of that.

LORD CHIEF BARON. I said "I certainly did not mean this, and I do not believe that I have done it," and if the objection had been taken, as I must say I think it ought to have been, a little earlier, and if an intimation had been given to me I should have corrected it at once, and have said "Gentlemen of the jury, it is supposed that I have said so and so; I mean nothing of the kind. On my own behalf I must say that the

learned attorney general now remembers that the moment the paper was put into my hands I said, 'Mr. Attorney General, that is not mine.' At present we need only say this—I repeat that if Mr. Jones will communicate with me upon the subject I have no doubt that we shall be able to put upon the rule everything which you wish to put upon it.

MR. ATTORNEY GENERAL. I should think so; I should wish to do it, with your lordship's permission, by taking the very terms of the short-hand writer's notes, including the final passage to which your lordship has referred, and then it would open to us the alternative view which your lordship has mentioned, namely, that even if the direction properly interpreted should be considered to be right, still it might possibly have the effect of misleading the jury.

The court then made the following rule:

In the Exchequer, Thursday the 5th day of November, 1863, between her Majesty's attorney general, informant, and Hermann James Sillem and others, claiming the Alexandra, defendants.

BY INFORMATION OF SEIZURE.

Upon the motion of Sir Roundell Palmer, knight, her Majesty's attorney general, it is ordered by the court that the said defendants do within a week after service of this rule, or a copy thereof, show cause to this court why the verdict found for the defendants upon the trial of this cause before the right honorable the lord chief baron of this court, at the sittings in Middlesex after Trinity term last, should not be set aside, and a new trial of this cause had, on the ground—1st, that the verdict was against the evidence; 2d, that the verdict was against the weight of evidence; 3d, that the learned lord chief baron did not sufficiently explain to the jury the construction and effect of the foreign enlistment act; 4th, that the learned lord chief baron did not leave to the jury the question whether the ship Alexandra was or was not intended to be employed in the service of the Confederate States to cruise or commit hostilities against the United States; 5th, that the learned lord chief baron did not leave to the jury the question whether there was any attempt or endeavor to equip, &c.; 6th, that the learned lord chief baron did not leave to the jury the question whether there was knowingly any aiding, assisting, and being concerned in the equipping, &c.; and 7th, that the learned lord chief baron misdirected the jury as to the construction and effect of the seventh section of the foreign enlistment act.

W. H. WALTON, Q. R.

TUESDAY, November 10, 1863.

Application to the court to fix a day to move to make rule for new trial herein absolute.

MR. SOLICITOR GENERAL. Would your lordships allow me to ask you if it would be convenient that the case of the Alexandra should be taken upon this day week, that is to say next Tuesday. I have been requested by the attorney general to put that question to the court.

LORD CHIEF BARON. Of course the rule has been served.

MR. SOLICITOR GENERAL. Yes, my lord.

LORD CHIEF BARON. My impression is that the earliest possible day is that which the court would make convenient for the purpose of hearing that argument. I need not remind you, Mr. Solicitor General, that although we are happy on any occasion to receive the courtesy of the law officers of the Crown in inquiring whether a day will be convenient to the court or not, still we are in some measure bound to take the day which is mentioned by the law officers.

MR. SOLICITOR GENERAL. Yes, my lord; at the same time I was requested to put it to your lordships whether next Tuesday would be a suitable day.

LORD CHIEF BARON. This day week?

MR. SOLICITOR GENERAL. This day week.

LORD CHIEF BARON. Certainly.

MR. BARON BRAMWELL. Had we not better consider this, that Wednesday is a special paper day; but I should think that when the argument was once begun we had better go on with it, had we not?

MR. SOLICITOR GENERAL. I should think so, my lord.

LORD CHIEF BARON. From day to day?

MR. SOLICITOR GENERAL. From day to day. I should think that that would be the better course.

MR. BARON BRAMWELL. I think that it had better be understood by the bar, and be known that we shall not take the special paper on the Wednesday.

MR. SOLICITOR GENERAL. It will be understood that the Alexandra case goes on from day to day?

MR. BARON BRAMWELL. Yes; if it lasts over a day.

LORD CHIEF BARON. May I ask, Mr. Solicitor General, as you have mentioned the matter, whether there was a short-hand writer at the trial, both for the Crown and for the defendants?

MR. SOLICITOR GENERAL. I believe there was, my lord. I was not then in the case.

LORD CHIEF BARON. I am aware of that.

MR. SOLICITOR GENERAL. I think so.

LORD CHIEF BARON. There is no doubt that there was a short-hand writer's note.

MR. SOLICITOR GENERAL. No doubt, my lord.

LORD CHIEF BARON. I think it right really to mention, with respect to myself, as we see mistakes made upon the matter, that there is no doubt there was a short-hand writer's note—that there is no doubt about?

MR. SOLICITOR GENERAL. No doubt whatever.

LORD CHIEF BARON. Agreed upon by both parties.

MR. SOLICITOR GENERAL. I believe so.

LORD CHIEF BARON. And never objected by me at all; on the contrary, accepted as the faithful record of all that passed.

MR. SOLICITOR GENERAL. Yes, my lord.

LORD CHIEF BARON. And I wish to state publicly here that I objected to the bill of exceptions in the first instance, and on the ground upon which I have continued to object to it.

MR. SOLICITOR GENERAL. Yes, my lord.

LORD CHIEF BARON. I did so before the jury had left the box, instantly, the moment it was put into my hands, and my reason for not immediately arguing it or pointing it out was this, that there being a short-hand writer's note, I said: "Every word which has passed has been taken down, there can be no doubt as to every syllable which has been uttered in court, and therefore no mistake can be made upon the facts, they are all agreed upon, therefore there is no occasion to argue the matter now. You have tendered a bill of exceptions, but if you wish to alter it conformably to a more correct view of the facts, you can do so." That was the substance of it. It is very true that I said "I will accept any bill of exceptions;" but of course that must mean, "I will accept any bill of exceptions which is warranted by the record of the evidence."

MR. SOLICITOR GENERAL. Of course, my lord.

LORD CHIEF BARON. I wish that really to be distinctly and publicly understood and known.

MR. SOLICITOR GENERAL. Quite so, my lord. Of course there is no misunderstanding about this, that now the rule is substituted for the bill of exceptions.

LORD CHIEF BARON. And I have no doubt, Mr. Solicitor General, that you will agree with me that there being clearly a right of appeal, the proceeding by this motion is far more beneficial to the Crown than going on the bill of exceptions alone.

MR. SOLICITOR GENERAL. If I might give an opinion, I should say far more so, my lord.

MR. BARON BRAMWELL. No doubt.

LORD CHIEF BARON. Unfortunately the attorney general became ill, and my communication with him ceased, but I was about to suggest the propriety of bringing the whole matter before the court, by motion, instead of going on with the bill of exceptions.

MR. SOLICITOR GENERAL. Your lordship did make some suggestion of the kind, I think.

LORD CHIEF BARON. Yes, I believe I did.

MR. SOLICITOR GENERAL. Your lordship did.

LORD CHIEF BARON. My memory upon the subject was appealed to. There is nothing of the sort. The record of the facts was agreed upon between us, and there is no doubt whatever that the facts were unchangeable, and have never been changed from that moment to this.

IN THE COURT OF EXCHEQUER AT WESTMINSTER—MICHAELMAS TERM, 27TH VICTORIA.

Before the lord chief baron, Mr. Baron Bramwell, Mr. Baron Channell, and Mr. Baron Pigott.

THE ATTORNEY GENERAL *v.* SILLEM AND OTHERS, claiming the vessel *Alexandra*.

Argument on motion to make rule nisi for new trial absolute.

FIRST DAY, TUESDAY, NOVEMBER 17, 1863.

The LORD CHIEF BARON. Mr. Attorney General, have you anything to move?

MR. ATTORNEY GENERAL. My lord, in the case of the Attorney General *vs.* Sillem, I believe that in point of form I ought to move to make the rule absolute.

The LORD CHIEF BARON. That you ought to do.

MR. ATTORNEY GENERAL. I make that motion.

LORD CHIEF BARON. Sir Hugh Cairns shows cause.

MR. ATTORNEY GENERAL. Yes, my lord.

SIR HUGH CAIRNS. My lords, before I proceed to address your lordships, I may perhaps be permitted to ask whether it is proposed by your lordships that the notes of the evidence should be read before the argument proceeds.

LORD CHIEF BARON. If you think that desirable, of course I will read the notes.

SIR HUGH CAIRNS. No, my lord, I cannot at all say that it would be what we should ask, because it will be my duty, in the course of the observations which I have to offer, to comment upon parts of the evidence, and it might perhaps lead to my reading what your lordships had already heard.

LORD CHIEF BARON. There is a published copy of what took place at the trial, which, generally speaking, is correct enough; there are some verbal inaccuracies in it, one of which I shall have occasion to point out, probably, in the course of the argument. But the learned attorney general the other day, in moving for the rule, went over a very great part of the evidence. The court, I believe, is already in possession of the case as much as if it heard the evidence. If I recollect rightly, the evidence occupied the greater part of two days, and unless you think it necessary that it should be read by the bench, that is to say, by myself, who presided at the trial, I own that I do not think that it is necessary for the argument.

SIR HUGH CAIRNS. My lord, I am quite in your lordship's hands; I do not at all suggest that it should be done.

LORD CHIEF BARON. No, I should say that we are rather in your hands; if you desire it to be read it shall be read.

SIR HUGH CAIRNS. If your lordship puts it in that way, I should say that it would be more convenient that it should not be read; but, of course, if any question should arise as to the published report to which your lordship has referred, we shall be corrected by any notes which your lordship may have upon the point.

LORD CHIEF BARON. Mr. Attorney General, you do not require the notes to be read?

MR. ATTORNEY GENERAL. No, my lord.

LORD CHIEF BARON. Have you any note of the motion?

MR. ATTORNEY GENERAL. Your lordship means of the motion which I had the honor to make?

LORD CHIEF BARON. Yes.

SIR HUGH CAIRNS. We have a short-hand writer's note of what took place on the occasion of the motion being made.

MR. ATTORNEY GENERAL. My lord, we have in print an uncorrected and not very accurately printed document from the short-hand note. I have no doubt your lordships would readily see the inaccuracies wherever they were material.

SIR HUGH CAIRNS. My lords, I have the honor of attending your lordships in this case on behalf of the defendants, for the purpose of showing cause against a rule which has been obtained by the attorney general for a new trial, upon grounds which have been divided into seven different heads. My lords, as to some of those grounds one can have no doubt, simply looking at them, as to what the meaning of them is, and what is the argument proposed to be adduced in support of them. For example, I find that the first and second grounds upon which the rule has been obtained are these: "First, that the verdict was against the evidence; secondly, that the verdict was against the weight of evidence." Those are expressions which of course we all understand and are prepared to meet. Then I find that the fourth ground is, because "the learned lord chief baron did not leave to the jury the question whether the ship *Alexandra* was or was not intended to be employed in the service of the Confederate States, to cruise or commit hostilities against the United States." That, again, my lords, is a ground which definitely states what the objection is, and which can be met accordingly. So, also, with regard to the fifth and the sixth grounds, which assert "that the learned lord chief baron did not leave to the jury the question whether there was any attempt or endeavor to equip," and "that the learned lord chief baron did not leave to the jury the question whether there was knowingly any aiding, assisting, and being concerned in the equipping." My lords, all those grounds are definite. But then there remain two further grounds, which are numbered the third and the seventh, the third being "that the learned lord chief baron did not sufficiently explain to the jury the construction and effect of the foreign enlistment act," and the seventh being "that the learned lord chief baron misdirected the jury as to the construction and effect of the seventh section of the foreign enlistment act." My lords, I cannot avoid saying at the outset that those are grounds which, as I find them in the rule, I am bound to suppose are in accordance with the practice of the court; but at the same time they impose on those who, like myself, have cast upon them the duty of showing cause against a rule of this sort, a task which it is very difficult to discharge, because they inform us that after I have been heard, and my learned friends who appear with me have been heard, we are then to expect an argument of the grounds and of the nature of which we are not in any way forewarned. We are told that your lord-

ships are to be asked to conclude that the learned lord chief baron, in some way which is not specified, misdirected the jury, or did not direct the jury; but the grounds upon which that is to be contended for we are not told, and we cannot meet. I do not desire to overstate the difficulty at all; I admit that we have had some kind of intimation by a few sentences which fell from the learned attorney general in moving for the rule, but beyond those we have had no definite statement as to what the argument of the Crown is to be.

Now your lordships will perhaps remember that the ship in question, the *Alexandra*, was seized on a particular date in this year, the 5th of April, and that she was seized in a public dock in Liverpool, the Toxteth dock. It would be proper at the outset that I should ask your lordships for a moment to look at the allegations in the information and in the plea which constitute the issue between the parties; and, my lords, in this case, as indeed in all the argument which I have to submit, I will take leave to refer your lordships to a book, with which I believe the bench is furnished, a book which is printed by the Queen's printers, what is called the larger of two books which have been referred to, and which very conveniently comprises not merely the shorthand writer's note of the trial, subject to whatever observation may be made as to inaccuracies, but also a print both of the English and of the American foreign enlistment act, and of the information, and of certain other matters which are very material to be considered. My lords, in that book, if your lordships are in possession of copies of it, you will find in the first page* of the appendix the information in this case; and for the purpose of pointing out the issue, it will be sufficient that I should refer your lordships to the first count alone of the information. I hope that your lordships have copies.

Mr. BARON BRAMWELL. I have not got it.

[A copy was handed to Mr. Baron Bramwell.]

SIR HUGH CAIRNS. My lords, the information is set out sufficiently in the first page of the appendix, and the first count is this: "For that certain persons," and then a number of names are given which I pass over for the present, "and divers and very many other persons, whose names are to the said attorney general at present unknown, heretofore and before the making of the said seizure, and after the third day of July, in the year of our Lord 1819, and before the 25th day of May, in the year of our Lord 1863, to wit, on the 5th day of April, in the year of our Lord 1863, within a certain part of the United Kingdom," which is mentioned, "without any leave or license of her Majesty for that purpose first had and obtained, did equip the said ship or vessel, with intent and in order that such ship or vessel should be employed in the service of certain foreign states, styling themselves the Confederate States of America, with intent to cruise and commit hostilities against a certain foreign state," namely, "the republic of the United States." I need not read it more at length. Now, my lords, that may be taken as a sample of the counts; the alteration in the other counts may afterward be referred to. Your lordships will find the plea at page 9; it is the plea of the firm which is called the firm of Fawcett, Preston and Company; the names of the individual partners are given. "And hereupon Hermann James Sillem" and others, "who claim the property of the said ship or vessel called the *Alexandra*, and the furniture, tackle, and apparel belonging to and on board the said ship or vessel to belong to them, by Edward Lee Rowcliffe, their attorney, appear here in court, and for plea to the said information say, that the said ship or vessel, furniture, tackle, and apparel, did not, nor did any or either of them, or any part thereof, become, nor are, nor is the same, or any or either of them, or any part thereof, forfeited for the several supposed causes in the said information mentioned, or for any or either of them, in manner and form as by the said information is charged." The issue, therefore, between the parties is, whether the ship, the *Alexandra*, was, under the act of Parliament, forfeited for all or for any of the causes which are mentioned in the information.

Now, my lords, in the argument which I shall take leave to submit to your lordships, the course which it seems to me it will be convenient to follow, and which therefore I would venture to indicate now, would be this, to ask your lordships' attention in the first place, altogether apart from the evidence in this cause or from the charge of the learned judge who tried the case, to what I submit is the proper construction of the foreign enlistment act as we find it upon the statute book; then to solicit from your lordships an attention to the evidence which was given in this case, for the purpose of dealing with the rule so far as it states that the verdict is against evidence, or against the weight of evidence; and then in the third place to submit the view which we take of the charge of the learned Lord Chief Baron, and the objections which we understand are made against that charge.

Now I will ask your lordships, in the first instance, to look at the foreign enlistment act, not at this moment for the purpose of arguing upon construction, but for the purpose of pointing out the general nature, in the first instance, of the part of that act with which we have to deal. Your lordships here again will find the act printed in a very convenient way, and, I believe, accurately, though, of course, I do not at all pledge myself to the accuracy of every word, but, so far as I have observed, it is accurately printed in the appendix to the book to which I have already referred. Your

* See page 131.

lordships will find that the act commences at page 13* of the appendix. My lords, I shall have to refer to various sections in it, but at present your lordships will favor me by turning to the seventh section alone. There are a great many words in that section, and I am afraid it must be said of them that they have contributed from their number rather to darken than to elucidate the meaning; and I fear that, in the first place, I must take the liberty of reading the section, or at all events the first half of it, for the purpose of making an observation upon it. "And be it further enacted, that if any person within any part of the United Kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or storeship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom his Majesty shall not then be at war; or shall, within the United Kingdom, or any of his Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to his Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted." And then, my lords, come provisions with regard to the forfeiture of the ship which I need not read at length.

My lords, I must take leave, in the first place, to observe upon this section, that there are on the face of the section, without any elaborate argument, traces of very great want of accuracy and care in the manner in which the ideas in the section are expressed. Now, there are two examples of that, which may be mentioned, because scarcely any dispute can arise upon them. The first is this. Your lordships will observe that it provides in the first line "that if any person within any part of the United Kingdom" shall do so and so; "shall equip," &c. Now, of course, in point of strict construction, it might be said that that indicates this idea, that the person who is spoken of here is to be himself within the kingdom, though as to the act which he is to do, it might be done either in or out of the kingdom. Of course we all agree that that is not the construction, and the information in this case proceeds upon a different construction. The information proceeds upon this construction, which no doubt is the true one; it proceeds as if the act were worded thus: "If any person shall within the United Kingdom" do so and so, putting the word "shall," as it ought to be put, before the word "within." And it is clear that so utterly free from care and caution is the section, that when you come to the second part of the section the words are properly collocated, thereby condemning the improper collocation in the earlier part. When your lordships come to that part, which is about twelve lines from the bottom, and which contains the second alternative, the words are these, "or shall within the United Kingdom, or any of his Majesty's dominions, or in any settlement," &c., putting there the word "shall" in its proper place, and admitting that it was improperly placed before. I will mention another example, my lords, to show how very careless the section with which we have to deal is, and that is this: Your lordships observe the place where the word "transport" is spoken of, after the mention of the employment of the ship in the service of any foreign prince; there we find the words "as a transport or storeship, or with intent to cruise or commit hostilities against any prince," &c. The information in this case assumes (and for the present purposes I will not contest the point) that you are to read the word "transport" in connection with these words, "against any prince, state, or potentate." Be it so. But could any expression be imagined so utterly careless or inaccurate as to talk of employing a ship in the service of a belligerent as a transport or storeship against another belligerent; as if a transport or storeship could be properly spoken of as a ship which would come under an expression of that sort, a ship employed against another belligerent?

My lords, I pass however from those observations to others, which are more important. We must deal with the section, however carelessly it may be drawn, as we find it, upon proper principles of construction.

My lords, the next observation which I make is this. Your lordships see at once that whatever be the offenses which are indicated by this section, they are offenses purely and simply of positive law. They are not offenses which in the remotest

degree are *mala in se*, offenses against morality, or offenses as to which we can have any preconceived idea as to their character or extent. My lords, if that is required to be proved, it is proved to demonstration from this consideration, that the only offenses indicated in this section are upon the assumption of acts committed "without the leave and license of his Majesty for that purpose first had and obtained." If the Crown sanctions all or any of these things, whatever they are (of that I say nothing at present)—if the Crown sanctions all or any of these acts which are spoken of in the section, they are perfectly lawful, and are not struck at in any way by the act of Parliament. It is therefore obvious that it cannot be supposed that there is anything in any one of the offenses mentioned in the section which could in any degree be branded with the character of an offense *a priori*, an offense against morality, an offense against those principles which, in the absence of legislation, would be admitted to govern the conduct of mankind.

My lords, I think that that consideration will make it necessary for us to enlarge a little the line of argument upon a statute of this kind, and to enter into an inquiry, which I shall make as succinct as the case seems to me to demand, into the history and the policy of the legislation upon this subject. I shall thereby endeavor to place your lordships and to place all of us in the position of those who approached the framing of this statute; and, with a view of all the circumstances and considerations which surrounded them, I shall endeavor to ascertain what the meaning was of the words which they used to express their ideas. Now, my lords, I will for that purpose take a part of the act itself, namely, the preamble. It will not be all the information which we can receive upon the subject, but it will be the commencement of the investigation into the history of the act. The preamble tells us this, at page thirteen: "Whereas, the enlistment or engagement of his Majesty's subjects to serve in war in foreign service without his Majesty's license, and the fitting out and equipping and arming of vessels by his Majesty's subjects, without his Majesty's license, for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandises of any foreign prince, state, potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom." We are told that these acts which are here described "may be prejudicial to and tend to endanger the peace and welfare of this kingdom," and that "the laws in force are not sufficiently effectual for preventing the same." What therefore was intended to be struck at and to be restrained was certain acts as to which it was said that they might be "prejudicial to and tend to endanger the peace and welfare of the kingdom," and that the laws in force at that time did not sufficiently restrain them.

Now, my lords, in order to avoid as far as possible controversy upon the point, I will take leave to repeat the view which was presented to your lordships by the attorney general in moving for this rule as his view of the object of the act of Parliament. I will not admit it to be the only object, and of that I shall have something to say afterward, but I will deal with it as at all events one and a very main object of the act of Parliament. The attorney general said, according to the short-hand writer's note, in moving your lordships for this rule, after repeating the preamble, as I have done, of the act of Parliament, "It is plain that the object was to preserve the neutrality of this country, and to enforce it against the subjects of this country, in matters in which the neglect of it by those subjects, or the violation of it here by foreign belligerent governments, was thought calculated to lead to a position, as regards foreign nations, which would endanger the peace and welfare of the kingdom. How would it endanger the peace and welfare of the kingdom? Manifestly by involving us in war, by making us practically so far parties through our subjects to belligerent operations, if we allowed this country to be made the base of those operations, either for the enlistment of men or for the equipping of vessels of war, as to make it probable that other countries would not endure it, but resent it, and that so we might become involved in war. That is the mischief which the statute is manifestly intended to protect us against."

My lords, there is no difficulty in ascertaining, therefore, what the view of the Crown is as to the main object of the act of Parliament. The attorney general says that in the case of war prevailing between two belligerents, we ourselves remaining neutral, we have certain duties as a nation to perform in an international point of view. If those duties are neglected, one or other of the belligerents may complain of that neglect. If redress is not given upon that complaint, we, the neutral nation, may be involved in war; the belligerent which considers that it has a right to complain of our conduct may make it a *casus belli* against us. Therefore, says the attorney general, it was that the Crown came to Parliament and asked for the sanction of the legislature to a restraint put by the Crown upon those acts which, if not restrained, would be complained of by the foreign belligerent power, and if not redressed, would become the source and the origin of war against ourselves.

My lords, if that is so, of course that again opens up a field which we shall have to

examine, and invites us to consider, and very properly invites us to consider, what was the extent and ambit of international duty which one or both of the belligerent powers might call upon us to observe, and which, if not observed, might be a cause of complaint against us on the part of the belligerent powers in a war in which we were neutral.

Now, my lords, I think that in that way we shall get, and get upon principles which the attorney general himself admits, a key to the municipal legislation upon the subject; and, fortunately, my lords, the rules of international law upon this point will, if I mistake not, be found extremely simple, extremely clear, and, if I may take leave to add, extremely sensible.

My lords, there are two rules, as I understand it, of international law, as to which I may say they are established upon authority which cannot be doubted, and between which the whole of this inquiry will lie. Those, my lords, are rules with regard to the conduct in war of the subjects of a neutral power. I disembarass the case of any question as to the duty of the neutral power itself as a government; that is a different thing; that stands upon much higher and broader principles; I speak of the duty in war of the subjects of a neutral power. The government of a neutral power, we all know, as a government, is not at liberty to perform the smallest act which would be in itself an assistance to either of the belligerents. For example, the government of a neutral power would not be at liberty to furnish a gun, to furnish a shot, to furnish powder, or to furnish ammunition of any sort to either of the belligerents. But with regard to the subjects of the neutral power the case is different; and the first of the two rules to which I have referred is this—subjects of a neutral power in time of war are at liberty to supply either of the belligerents, or both of the belligerents, with all those articles which are termed by the generic name of “contraband of war.” My lords, the rule as to that point I will take from an authority, as to which, at all events, in this controversy, there will be no dispute, the authority of Mr. Chancellor Kent. I cite from the first volume of his Commentaries, and from the marginal paging 142, which runs through all editions. He says, “It is a general understanding, grounded on true principles, that the powers at war may seize and confiscate contraband goods by any complaint on the part of a neutral merchant, and without any imputation of a breach of neutrality in the neutral sovereign himself. It was contended on the part of the French nation in 1796,” (that is to say it was contended against the United States,) “that neutral governments were bound to restrain their subjects from selling or exporting articles contraband of war to the belligerent power. But it was successfully shown, on the part of the United States, that neutrals may lawfully sell, at home, to a belligerent purchaser, or carry, themselves, to the belligerent powers contraband articles, subject to the right of seizure *in transitu*. This right has since been explicitly declared by the judicial authorities of this country. The right of the neutral to transport, and of the hostile power to seize, are conflicting rights, and neither party can charge the other with a criminal act.” Then, my lords, as to what is comprehended under the term “contraband,” which is here used, we find it laid down in an earlier page of the same volume, page 135, that they are arms and ammunition, and, in a naval war, ships and materials for ships, and also horses and saddles, and naval stores, and timber, and provisions, and various other matters, which I need not enumerate at length. They are, in fact, everything which, either by way of supplying ships, or by way of supplying provisions and other necessities for troops or for ships, can be made useful to either belligerent—those are the contraband articles which may thus be supplied.

My lords, in addition to that, (although perhaps expressions so clear and so undisputed want no further authority,) I will refer your lordships to the statement of the rule as laid down by Mr. Justice Story in an American case, printed at the end of the volume containing the present trial, viz., the case of the *Independencia*. I refer to the 55th* page of this appendix, and very near the top of that page, where Mr. Justice Story says, “There is nothing in our laws, or in the law of nations,” (and of course, my lords, it is to that expression that I am referring, “the law of nations,” for I am not now upon the municipal law,) “that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation.” Therefore, my lords, apart from any municipal regulation, that rule as regards international duty is perfectly clear. No belligerent power can complain of acts of subjects of a neutral power upon this footing—they are acts which are not in any way prohibited by any rule of international law.

My lords, that is one of the two rules of international law to which I refer; I will now ask your lordships’ attention to the second rule. The second rule is this—the territory of a neutral power must be kept absolutely inviolate from anything which may be termed a proximate or immediate act of war; and the neutral government will have a right to complain if that inviolability, so defined, of the neutral territory is infringed, either by the belligerent directly or by one of its own subjects at the insti-

* See opinion of Justice Story in the case of the *Santissima Trinidad* and the *St. Andre*. 7 Wheaton, pp. 283-335. Ed. 1822.

gation of the belligerent. Now, my lords, the rule upon this point is laid down as clearly and as succinctly as the former. Your lordships will find it in the book to which I first referred, namely, the first volume of Kent's Commentaries, at the marginal paging 118. The author says, "It is a violation of neutral territory for a belligerent ship to take her station within it in order to carry on hostile expeditions from thence, or to send her boats to capture vessels being beyond it. No use of neutral territory, for the purposes of war, can be permitted. This is the doctrine of the government of the United States. It was declared judicially in England, in the case of the *Twes Gebroeders*," (a case before Sir William Scott, to which I shall have to refer;) "and though it was not understood that the prohibition extended to remote objects and uses, such as procuring provisions and other innocent articles which the law of nations tolerated, yet it was explicitly declared that no proximate acts of war were in any manner to be allowed to originate on neutral ground; and for a ship to station herself within the neutral line, and send out her boats on hostile enterprises, was an act of hostility much too immediate to be permitted." Your lordships observe the distinction drawn (I shall have more to say upon it afterward) between those acts which are called immediate or proximate acts of war and those which are called remote acts of war or innocent acts. "No act of hostility is to be commenced on neutral ground. No measure is to be taken that will lead to immediate violence. The neutral is to carry himself with perfect equality between both belligerents, giving neither the one nor the other any advantage; and if the respect due to neutral territory be violated by one party without being promptly punished by just animadversion, it would soon provoke a similar treatment from the other party, and the neutral ground would become the theater of war." Now, my lords, I could not help feeling surprised in observing the note of the argument of the learned attorney general in moving for this rule, when he said, in an expression which was remarkable rather for its breadth than for its accuracy of statement, that he did not believe that it ever entered into the mind of any human being that one of the objects of the foreign enlistment act was to prevent collision between the belligerents using the neutral territory. My lords, it entered into the mind of Mr. Chancellor Kent, and it entered into the mind of Lord Stowell. The attorney general had not been aware of that; but the expressions which they use are extremely clear and interesting, and the case which they put, (as it happens,) as the consequence of a doctrine different from that which I will show your lordships is vindicated by the foreign enlistment act, is this—if that doctrine were to be tolerated, you would have first one belligerent making use of the neutral territory for arming and for proceedings of a warlike character, you would have the other belligerent claiming to do the same, and in place of a peaceful and undisturbed territory, which a neutral nation has a right to expect its ground to be, you would have the neutral territory the theater of collision and of war.

My lords, the same book upon this point refers to another matter connected with what I have read, and which still further illustrates it; I mean at page 120 of the marginal paging. The author says, "Bynkershoeck makes one exception to the general inviolability of neutral territory, and supposes that if an enemy be attacked on hostile ground or in the open sea, and flee within the jurisdiction of a neutral state, the victor may pursue him *dam ferret opus*, and seize his prize within the neutral state. He rests his opinion entirely on the authority and practice of the Dutch, and admits that he had never seen the distinction taken by the publicists or in the practice of nations. It appears, however, that Casaregis, and several other foreign jurists mentioned by Azuni, held a similar doctrine." Then other foreign jurists are referred to, as to whom Chancellor Kent says, "They maintain the sounder doctrine, that when the flying enemy has entered neutral territory, he is placed immediately under the protection of the neutral power. The same broad principle that would tolerate a forcible entrance upon neutral ground or waters in pursuit of the foe, would lead the pursuer into the heart of a commercial port. There is no exception to the rule, that every voluntary entrance into neutral territory with hostile purposes is absolutely unlawful. The neutral border must not be used as a shelter for making preparations to renew the attack; and though the neutral is not obliged to refuse a passage and safety to the pursuing party, he ought to cause him to depart as soon as possible, and not permit him to lie by and watch his opportunity for further contest."

My lords, in the case which was referred to in the previous passage which I read, by Chancellor Kent, the case before Lord Stowell of the *Two Brothers*, which is reported in the third volume of "Robinson's Admiralty Reports" at page 162, this question arose. There was a capture, the legality of which came in question. The capture was said to be illegal because the capturing ship at the time of the capture was lying within neutral territory, that is to say, within three miles of a neutral shore. The ship did not move herself, and did not with her guns or otherwise take any immediate part in the capture, but she sent her boats outside the neutral territory from the ship, and the boats made the capture; and it was contended that the capture was not invalid because the ship herself had not made it.

Now, Lord Stowell upon that point says, at page 164, "It is said that the ship was in all respects observant of the peace of the neutral territory; that nothing was done

by her which could affect the right of territory, or from which any inconvenience could arise to the country within whose limits she was lying; inasmuch as the hostile force which she employed was applied to the captured vessel lying out of the territory; but that is a doctrine that goes a great deal too far. I am of opinion that no use of a neutral territory for the purposes of war is to be permitted; I do not say remote uses, such as procuring provisions and refreshments, and acts of that nature which the law of nations universally tolerates; but that no proximate acts of war are in any manner to be allowed to originate on neutral ground; and I cannot but think that such an act as this, that a ship should station herself on neutral territory, and send out her boats on hostile enterprises, is an act of hostility much too immediate to be permitted; for, suppose that even a direct hostile use should be required to bring it within the prohibition of the law of nations, nobody will say that the very act of sending out boats to effect a capture is not itself an act directly hostile; not complete, indeed, but inchoate, and clothed with all the characters of hostility. If this could be defended, it might as well be said that a ship lying in a neutral station might fire shot on a vessel lying out of the neutral territory; the injury in that case would not be consummated, nor received on neutral ground; but no one would say that such an act would be an hostile act, immediately commenced within the neutral territory. And what does it signify to the nature of the act, considered for the present purpose, whether I send out a cannon shot which shall compel the submission of a vessel lying at two miles distance, or whether I send out a boat armed and manned to effect the very same thing at the same distance? It is in both cases the direct act of the vessel lying in neutral ground; the act of hostility actually begins, in the latter case, with the launching and manning and arming the boat that is sent out on such an errand of force. If it were necessary, therefore, to prove that a direct and immediate act of hostility had been committed, I should be disposed to hold that it was sufficiently made out by the facts of this case. But direct hostility appears not to be necessary, for whatever has an immediate connection with it is forbidden. You cannot, without leave, carry prisoners or booty into a neutral territory, there to be detained, because such an act is an immediate continuation of hostility. In the same manner an act of hostility is not to take its commencement on neutral ground. It is not sufficient to say it is not completed there; you are not to take any measure there that shall lead to immediate violence; you are not to avail yourself of a station on neutral territory, making as it were a vantage ground of the neutral country, a country which is to carry itself with perfect equality between both belligerents, giving neither the one nor the other any advantage. Many instances have occurred in which such an irregular use of a neutral country has been warmly resented, and some during the present war; the practice which has been tolerated in the northern states of Europe, of permitting French privateers to make stations of their ports, and to sally out to capture British vessels in that neighborhood, is of that number; and yet, even that practice, unfriendly and noxious as it is, is less than that complained of in the present instance; for here the ship, without sallying out at all, is to commit the hostile act. Every government is perfectly justified in interposing to discourage the commencement of such a practice; for the inconvenience to which the neutral territory will be exposed is obvious; if the respect due to it is violated by one party, it will soon provoke a similar treatment from the other also; till, instead of neutral ground, it will soon become the theater of war;" referring again there to what was expressed by Chancellor Kent in his Commentaries, the circumstance of a neutral territory being itself the scene of collision, as being one of the grounds which had led to this international rule of war.

My lords, I will not dwell longer upon those authorities than to pray your lordships to remember the distinction there taken, which will be found, if I mistake not, extremely important as the argument advances; the distinction which is there taken between certain things (connected with hostilities, it may be) which are innocent, and other things connected with hostilities, which are matters of complaint under international law. Those things which are termed direct and proximate acts or causes of hostility are deemed to be a violation of international law. Those things which are remote and not proximate are not an infringement of international law; and an instance is given by Sir William Scott, even with regard to a ship admitted to be a ship which intends to commit hostility at some future period, namely, that the obtaining provisions and supplies of an innocent character, and not of a warlike character, is an act which is remote—it may be a cause of war, it may be connected with war, but it is remote and not proximate, and the neutral nation cannot complain of any infringement of territory, if an act of that kind alone is committed upon it.

Now, my lords, those being the two rules, which, as it seems to me, are very clearly laid down, I will ask your lordships to consider as it were *a priori*, before approaching the history of municipal legislation or the words of municipal legislation, what would be the conclusion which we naturally should draw from these rules as to the course which municipal legislation might be expected to take. The law of nations defines a certain line outside the dominions of a state, I mean outside the land, up to which municipal jurisdiction extends, and beyond which it ceases. I do not examine the

curious point whether that is measured three miles from the shore, or the distance which a cannon would carry its ball—if the latter, the line must be a very variable one, having regard to the improvements in the art of gunnery—but whichever the line be, it is quite immaterial for my argument, whether it is one or whether it is the other. A line is to be drawn somewhere, which is to be the limit of the territory of any particular state. Then we find that, according to the rules of international law, it is allowable to a neutral state, that is to say, to the subjects of a neutral state, to carry and to deliver outside that line, or inside it, any of those articles which are called contraband of war, guns, ammunition, ships, or any other article which may be supposed. International law also holds that you might bring a ship to the outside of that boundary wherever it is drawn, that you might carry from the neutral state guns and ammunition, and warlike supplies of every kind, and deliver them into the ship outside the boundary, subject to the right of capture; the other belligerent, if so disposed and so able, might intercept the supplies, might capture the ship, and might seize the articles as contraband; but, subject to that, the act might be done without any offence against the principles of international law. But then, on the other hand, international law says, you must not originate on the neutral territory any proximate act of war; you must not issue out of the neutral territory with a ship which shall be prepared to commit hostilities.

MR. BARON BRAMWELL. I am sure I do not wish to interrupt you, Sir Hugh; but it seems to me that you have assumed very important matter in your argument, namely, that an unarmed vessel may sail in company with another ship having its armament on board, and that directly they get, say, some half dozen miles from the land, the armament may be transferred to the other ship. Have you established that by your authorities?

SIR HUGH CAIRNS. No, my lord; I have not come to cases of that kind, which would be put upon municipal law; I will deal with them afterward.

MR. BARON BRAMWELL. No, but upon international law. Have you established that? SIR HUGH CAIRNS. Upon international law, all that I come to at present is this: asking your lordships to suppose, from rules of international law which are clearly admitted, what a *priori* might be expected to be the course of municipal legislation in defense of international law; and then I will deal with the case which your lordship has been good enough to suggest. And I must take leave to say, that in an argument in which it does not fall to us to reply, any suggestion from any one of your lordships, in the place of being an interruption, is that for which we should feel most deeply grateful, because it enables us to follow what is passing in your lordships' minds.

MR. BARON BRAMWELL. I assure you that I made the observation which I did, because, as I understood your argument, (and nothing could be more clear, to my mind,) it assumed that the authorities which you had cited had established that it was a proposition of international law that an unarmed ship capable of receiving an armament might leave a neutral port in company with another ship capable of transferring that armament, and having that armament on board, and that when the two got beyond the territorial limit, the armament might be transferred from one to the other without a breach of neutrality. I thought you said that that had been established.

SIR HUGH CAIRNS. I did not desire to assume that; on the contrary, I desired at this point of the argument to state this, about which, it seems to me, there can be no dispute upon the authorities, and I do not for the present propose making any particular answer to that question of your lordship's; I simply take this case; I say it is beyond all doubt clear, according to the rules of international law, and there would be no controversy upon it, that you might bring a ship outside the limit of neutral territory—I do not mean from within, but from without—that you might bring a ship to the verge of neutral territory, and hold it there or anchor it there; that you might, according to the rules of international law, fill and load another ship, or barge, or anything you please, with guns or with ammunition; that you might carry that barge to the outside of the limit, and then transfer the guns and the ammunition which you had so put on board, just as you would do in a foreign port.

MR. BARON BRAMWELL. I beg your pardon; then I misunderstood you.

SIR HUGH CAIRNS. I took that case purposely, because I do not think there can be any controversy as to it; the other case might require further consideration, and I shall come to it by and by.

MR. BARON BRAMWELL. I beg your pardon; it was my fault; I misunderstood you.

SIR HUGH CAIRNS. And then, my lord, I put as a contrast to that another proposition, about which there could be no doubt in point of international law. You would not be allowed in any manner to violate, by what I term a proximate act of war, the neutral territory. You would therefore not be allowed (this is a matter about which there could be no controversy on either side) to go inside a neutral territory and there to arm and prepare for hostilities—(I will say “prepare for hostilities,” in order to avoid technical words, about which a controversy might arise)—you would not be allowed to go inside a neutral territory, and arm and prepare for hostilities in a way calculated to commit hostilities, a ship which afterward might sally out of the neutral territory,

and to go beyond the limit, and, without any intervening space occurring in which it might be captured by the belligerent power, commence hostilities with a ship so armed—because, my lords, we can readily imagine that this would be a sort of outrage which might properly be held in such a case by either of the belligerents to be a breach of neutrality. The belligerent would say to the neutral power, "Now, we must have an understanding about this; you say that your neutral territory is to be inviolate; I agree to that. I have no right to go inside your territory and cut out a ship which I see arming and preparing there to commit hostilities. I cannot violate your territory. If I went into one of your harbors to do that, you would object to it, and would prevent it, and in an international point of view I could not claim a right to do it." But then the belligerent would say, "You on your part must take care that what passes out of your territory shall pass out in such a state as that I shall have a fair chance of capturing or dealing (if I am entitled to capture or to deal with it) with that which comes outside your territory, without its having occupied itself within your territory by preparing itself for aggression upon me, so that when it comes out of your territory it shall not come out as a ship which I have to cope with as a ship of war, but as an article of property which might, if it could escape my watchful care, find its way into the port or the possession of another belligerent, but as to which I in my turn have a right to the chance of capturing it, and taking it before it could commence hostilities against me." That would be a very natural course for a belligerent to take, and very natural language for a belligerent to hold, and it is language, the sense and wisdom of which it is impossible to dispute. Therefore, my lords, I should say *a priori*, that what we would expect to be the course of municipal legislation upon the subject would be some legislation which would guard against that evil which I have endeavored to point out, and which, by way of restraint upon the subjects of the neutral power, would prevent its subjects doing that of which, in the language that I have endeavored to convey, the belligerent might complain.

Now, my lords, let us see whether that will be found to be the course of the municipal legislation upon the subject; and for that purpose we have to address ourselves to the history of that municipal legislation. Your lordships have heard, both to-day and on a former occasion, that the first act of which we have knowledge, the first definite municipal act of the legislature, was one passed by the Congress of the United States, in the year 1794, about seventy years ago. My lords, there are various reasons why, if there be any question or doubt upon the construction of our own act of Parliament, we may fairly look to the history of American legislation upon the subject. One reason would be that, to a very great extent, in the words of the statute, it is found that our act of Parliament follows the American act of Congress. Another reason would be, that we know as matter of history that it was distinctly affirmed that the object of the legislation in this country was to follow, and to follow as closely as might be, the course of the American legislation.

My lords, I find that, with reference to the English act of Parliament, the minister of the day, by whom it was introduced, I mean Mr. Canning, said this—I quote now from the fifth volume of the Collection of his Speeches, at page 50—"If I wished for a guide in the system of neutrality, I should take that laid down by America in the days of the presidency of Washington and the secretaryship of Jefferson. In 1793, complaints were made to the American government that French ships were allowed to fit out and arm in American ports for the purpose of attacking British vessels, in direct opposition to the laws of neutrality. Immediately upon this representation the American government held that such a fitting out was contrary to the laws of neutrality, and orders were issued prohibiting the arming of any French vessels in American ports. At New York a French vessel fitting out was seized, delivered over to the tribunals, and condemned. Upon that occasion the government held that such fitting out of French ships in American ports for the purpose of cruising against English vessels was incompatible with the sovereignty of the United States, and tended to interrupt the peace and good understanding which subsisted between that country and Great Britain. Here, sir, I contend is the principle of neutrality upon which we ought to act. It was upon this principle that the bill in question was enacted."

My lords, I will ask your lordships' particular attention for a moment as a matter of history to this fact. Mr. Canning refers to certain rules which were issued by the American government just immediately before the act of Congress was passed—rules which I will show your lordships are also referred to by international writers as being the true exposition of international law. Mr. Canning refers to those rules; and he says that if he wished for a guide in the system of neutrality, he would take those rules so laid down; and he says that it was upon the principle of those rules that the English act, as a matter of history, in his view, was enacted.

My lords, that will bring us to the few words which I have to say upon the history of the American act of Parliament. The subject of the history of course can only in a limited point of view be brought before or properly entertained by your lordships. It is a very interesting study—it has been made, especially in recent days, the subject of very much discussion by those who treat of such matters; and the reference which I

will take leave to make to it shall be of a very limited character. Now, my lords, what we know as matter of history upon this point is this: The American act of Congress was passed in the beginning of the year 1794—the occurrences which led to its being passed took place in the year 1793. Your lordships recollect that the French republic was constituted early in the year 1793. One of the first acts which the French republic did was to send a minister to the United States of America—a minister whose name was Genet. One of the first things which he did when he went to America was to promote, or, I should say, to institute the equipment of privateers in American ports to cruise against and capture English vessels, the French republic having declared war against England. At this time the government of the United States was neutral, not only in that contest, but was at peace with all the world; and it was no doubt one leading feature in the policy of the great man who then presided over the destinies of America, to remain neutral in all contests as far as he possibly could, and to reap the advantages which a commercial country might naturally expect to reap from a state of neutrality in the midst of war. Accordingly the American government considered the acts which were taking place under the direction of Monsieur Genet, and they endeavored to ascertain how far those acts could be put a stop to, upon principles of international law, and if they could not be put a stop to upon principles of international law, to ascertain how far municipal law should be called in aid, and constituted for the purpose.

My lords, there are two or three references to matters of history which will bring us conveniently to the consideration of the American act of Congress. In the correspondence of one of the American ministers of the day, Jefferson, I refer to a book which is entitled "Jefferson's Memoirs and Correspondence," in the third volume, at page 242, Mr. Jefferson, writing to Monsieur Genet, the French minister, refers to this subject in this way—the date of this is the 5th of June, 1793, it is before the American act of Congress was introduced—he says: "In a conversation which I had afterward the honor of holding with you, I observed that one of those armed vessels, the Citizen Genet, had come into this port with a prize, (that is, into the port of Philadelphia,) that the President had thereupon taken the case into further consideration, and after mature consultation and deliberation, was of opinion that the arming and equipping vessels in the ports of the United States to cruise against nations with whom they were at peace, was incompatible with the territorial sovereignty of the United States; that it made them instrumental to the annoyance of those nations, and thereby tended to compromise their peace; and that he thought it necessary, as an evidence of good faith to them, as well as a proper reparation to the sovereignty of the country, that the armed vessels of this description should depart from the ports of the United States."

My lords, we have a letter from Washington, just about this time, to one of his ministers, which shows us what was working in his mind, and what led afterward to the rules which his government framed. It is a letter to Mr. Hamilton, the Secretary of the Treasury—it is printed in Sparks's Collection of the Writings of Washington, the tenth volume, at page 345. He says, writing about the same date, a few days before or after, to Mr. Hamilton: "Dear Sir: As I perceive there has been some misconception respecting the building of vessels in our ports, which vessels may be converted into armed ones, and as I understand from the attorney general that there is to be a meeting to-day or to-morrow of the gentlemen on another occasion, I wish to have that part of your circular letter which respects this matter reconsidered by them before it goes out. I am not disposed to adopt any measure which may check ship-building in this country, nor am I satisfied that we should too promptly adopt measures in the first instance that are not indispensably necessary. To take fair and supportable ground I conceive to be our best policy, and it is all that can be required of us by the powers at war, leaving the rest to be managed according to circumstances, and the advantages to be derived from them."

My lords, the matter having originated in that way, Congress was meeting at the time, and before any act was introduced into Congress the circular letter, referred to in this letter, was settled and sent out to the various collectors of customs in America. That circular letter contains certain rules to which I shall call your lordships' attention, and then I shall show your lordships (because this is what makes these references material) by the authorities of international writers that those rules are referred to as containing a true exposition of international law.

My lords, in the collection of American State Papers, the first volume, at page 45, we have the circular as finally settled, signed by Mr. Hamilton, the Secretary of the Treasury, and containing a series of rules. Now, what the circular says to the collectors of customs is this: I will not read it all, but I will read those parts of it which seem to me to bear upon this point. It says: "No armed vessel which has been or shall be originally fitted out in any port of the United States by either of the parties at war is henceforth to have asylum in any district of the United States. If any such armed vessel shall appear within your district, she is immediately to be notified to the governor and attorney of the district, which is also to be done with respect to any prize that such armed vessel may bring or send in. At foot is a list of such armed

vessels of the above description as have hitherto come to the knowledge of the executive. The purchasing in, and exporting from the United States, by way of merchandise, any articles commonly called contraband, being generally warlike instruments and military stores, is free to all the parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of those parties, they will be abandoned to the penalties which the laws of war authorize," (those penalties being, of course, seizure and forfeiture.) Then, lower down: "In case any vessel shall be found in the act of contravening any of the rules or principles which are the ground of this instruction, she is to be refused a clearance till she shall have complied with what the governor shall have decided in reference to her. Care, however, is to be taken in this not unreasonably or unnecessarily to embarrass trade, or to vex any of the parties concerned. In order that contraventions may be the better ascertained, it is desired that the officer who shall first go on board any vessel arriving within your district shall make an accurate survey of her then condition as to military equipment, to be forthwith reported to you, and that prior to her clearance a like survey be made, so that any transgression of the rules laid down may be ascertained." That was the point to which attention was to be directed. A vessel might come, a vessel might go; the survey which was to be applied by way of test to her condition when she departed as differing from that which it was when she came in was as to military equipment.

Then, my lords, come the rules, which are very remarkable. They are eight in number. It will not be necessary for me to read them all. The first is this: "The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties for military service, offensive or defensive, is deemed unlawful." The second rule is this: "Equipment of merchant vessels by either of the belligerent parties in the ports of the United States, purely for the accommodation of them as such, is deemed lawful." Then the third rule is this: "Equipments in the ports of the United States of vessels of war in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful." Then an exception is entailed upon that, referring to a French treaty, with regard to certain prizes taken from France, which does not bear upon the question at all, and I do not read it. Therefore, this third rule deals with the case of vessels of war in the strictest sense of the term, as to the destination and object of which there could be no doubt, in the immediate service of the government of any of the belligerents. If the equipments are of that nature that they would be applicable either to commerce or to war, although the destination and character of the vessel are perfectly well known, still, if they are ambiguous in their nature, they are to be deemed lawful. Then the fourth rule is this: "Equipments in the ports of the United States by any of the parties at war with France of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful," with the same exception with regard to certain prizes, which relates to the particular treaty which the United States had with France at the time, and which does not bear at all upon the general question. Then the fifth rule is: "Equipments of any of the vessels of France in the ports of the United States which are doubtful in their nature, as being applicable to commerce or war, are deemed lawful." Then, my lords, comes the sixth rule, which was simply the re-entertainment of a clause of the treaty which the United States had with France, which was of a very peculiar kind at that time, and we find that a great deal of controversy arose upon it between the ministers and Monsieur Genet. It appeared that France had, in her then existing treaty with the United States, a provision that the United States were not to open their ports to any privateer, or any vessel intended as a privateer, against France in any war which might take place; and, therefore, the sixth rule provided, not upon the principle of international law, but upon the principles of the particular treaty: "Equipments of every kind in the ports of the United States of privateers of the powers at war with France are deemed unlawful." That it related to the treaty is apparent upon the face of it. It is not a general clause, applicable to privateers of any belligerent, but applies to the privateers of those particular powers at war with France, imposing upon France itself, though a belligerent, no correlative obligation. Then the seventh rule is: "Equipments of vessels in the ports of the United States which are of a nature solely adapted to war are deemed unlawful."

The result, therefore, of the whole is this, that laying down what was then conceived (we shall see whether rightly or wrongly) to be the rule of international law in the case which the United States were looking to, where there were two belligerent powers, these provisions were made, in the first place complying with the requirements of the treaty which the United States had with one of the powers, but over and above that, providing for a test to be applied in every case, whether you were dealing with a ship clearly a vessel of war, or whether you were dealing with a ship as to which you did not know whether it was meant for war or for commerce, and as to which there might be a dispute. The rules were made for one case, and the other, whether the equipments, which it was attempted and proposed to acquire in a port of the United States, were

those which were solely applicable for war, or those which were doubtful and ambiguous in their character, and which would serve either for war or for purposes not warlike. It is said, if the equipments are solely applicable for war we shall prevent them; if they are those which, although applicable for war, still are not applicable solely to war, but might be supplied to any ship in order to make it a perfect ship; they are lawful and are not to be prohibited.

Then, my lord, having, in the course of year 1793, before Congress met, laid down those rules, Congress met at the close of the year. I will not delay your lordships by reading the message to Congress of Washington, which explains what he had done and how he had been led into laying down those rules by the acts of Genet, the French minister, and how he called upon Congress to give effect to what he had done by legislation. That may be presumed to be the course that would be naturally followed. And I now bring your lordships to the consideration of the American act which was passed under those circumstances by Congress, and which will be found at page 21 of the appendix to the printed book of the report of the trial. The date of the act there given is the year 1818.

Mr. BARON CHANNELL. That was the amended act?

SIR HUGH CAIRNS. Yes, my lord, the amended act, and which, for the purpose of the present discussion, may be taken to be the same as the act of 1794. My learned friend, who has the original, will observe if I found any argument upon it which does not occur upon the original. I believe, for any purpose of comment which I have to make, the acts will be found to be exactly the same. It does not appear that there is any preamble to this. I believe it is not customary for acts of the States to have preambles, and I am not at all sure that it is not a better plan than our own. I may say that this act, just like our own, is divided into clauses with regard to the army, and clauses with regard to the navy. The earlier clauses have reference to the army, but it will be proper for me, for one or two purposes, to refer to them. Your lordships observe that the first act does not, with regard to enlistment, deal generally with all persons who might be within the jurisdiction of the States; but it only deals with citizens of the United States. An observation upon this point was made by the attorney general, and I think under a misconception with regard to the object of the act, which is very plain. Of course by the municipal law, though there may be the circumstance that a foreigner may be within the jurisdiction, the municipal government has no right to interfere with the actions of that foreigner as regards enlistment, there is no reason why he should not enlist where he pleased. The municipal state, though it has jurisdiction over every one within its limits, has only jurisdiction with regard to that which savors of the allegiance of its citizens or natural-born subjects. The act is framed upon that principle.

LORD CHIEF BARON. The act of Congress you are referring to contemplates an offense or crime of a citizen of the United States within the territory or jurisdiction thereof; not so our own act.

SIR HUGH CAIRNS. Not so our own. I take leave to think that our own in that respect is founded upon much truer principles, because it is obvious that that is exactly the extent of authority which a state has over its own subjects. A state, with regard to its own subjects who owe allegiance to it, has a right to say, "You shall not in any part of the world accept employment in the military force of another power without the consent of your own sovereign."

LORD CHIEF BARON. Therefore the ninth section of our own act makes punishable such an offense when committed out of the kingdom.

SIR HUGH CAIRNS. No doubt. The first section is this: "If any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people in war, by land or by sea, against any prince, state, colony, district, or people with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor," and is finable. Then, my lords, comes the second section, which divides itself into two parts, first by way of general enactment, and then by way of qualification, "that if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided*, That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who shall transiently be within the United States, and shall on board of any vessel of war, &c., which, at the time of its arrival within the United States, was fitted out and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board

such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people;" bringing it, therefore, up very much to the same as the first, qualifying it not perhaps quite so widely, but preventing its applying to any one not owing permanent allegiance to the United States.

The more important sections are those which follow. The third, which agrees to a certain extent with the seventh section of the English act, as it now stands, is this, "If any person shall within the limits of the United States"—and there I pause to observe that I think our American brethren wrote better English in this respect than we did—they put the "shall" in its proper place, whereas, *per incuriam*, in our own act it has slipped out of the place where it ought to be found—"If any person shall within the limits of the United States fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years." Then there is a provision with regard to the forfeiture of the ship. There are some very peculiar words in the framing of that clause. It is a very singular thing, though it is not at all necessary that I should derive any argument from it one way or the other, that the words in the first part of that clause are conjunctive, "fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed; whereas, when we come to the question of being concerned in the furnishing, it is "the furnishing, fitting out, or arming of any ship or vessel."

That has been a subject of controversy in America, and at a proper time I will show your lordships what has been decided upon that in America; I only observe upon it now to show how very singularly these acts are framed. Another thing is very singular that when we come to the word "concerned," another term is introduced which is not found in the earlier part of the sentence, viz., "furnishing." In the early part of the sentence it is "fit out and arm." Then you have, "procure to be fitted out and armed;" then you have, "be concerned in the furnishing, fitting out, or arming." Whether that makes any enlargement of the offense or not I do not stop to consider. I only point out these things to your lordships' attention at present. All I would say upon the construction of this section, passing by those nice criticisms as to "ands" and "ors," is this: if this section means this—You shall not, within the United States, fit out a ship as a ship of war, intending her to be employed by one belligerent against another—then I say that exactly tallies with the rules laid down by Washington and affirmed, as I will show your lordships, by international law writers, because I apprehend the meaning of that in the more enlarged terms would be this—you shall not fit out a ship as a ship of war; that is, you shall not fit out a ship with any of those distinctive fittings, with any of those distinctive matters of equipment, which are not ambiguous, which may not serve for other purposes beside use in a ship of war—you shall not fit out a ship of war with distinctive fittings or equipments, which can be of use or available in no ship except in a ship of war. That would exactly tally with the rules laid down by the American government upon the subject beforehand.

I will now ask your lordships to go to the next section for the present purpose; the section relates to a matter which will not come in controversy here, but I will read it: "If any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship, or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise or commit hostilities upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such person so offending shall be deemed guilty of a high misdemeanor;" that is, to commit hostilities upon citizens of the United States, which is a wholly different matter. The attorney general reminds me accurately that that fourth section was not to be found in the act of 1794, but it was introduced for the first time into the act of 1818. This is not a section dealing with the question of international law at all, it is dealing with the case of what I may call piracy or burglary, or whatever the term may be.

LORD CHIEF BARON. It is sort of treason against the United States, you know.

SIR HUGH CAIRNS. It is one citizen committing hostilities upon another.

LORD CHIEF BARON. You are here distinguishing the act against which the statute is leveled and the attempt to do the act.

SIR HUGH CAIRNS. No, I do not at present; I will deal with that as a separate

question. I do not desire to embarrass the argument I am now submitting to your lordships by the minor argument of what may be an attempt to do a particular act. I desire to follow out the principal act itself.

LORD CHIEF BARON. You will come to that by and by.

SIR HUGH CAIRNS. Yes.

LORD CHIEF BARON. It seems to me to be extremely important, before you inquire what is meant by attempting to do a thing, and assisting, and endeavoring, and procuring, and so on, to do a thing, first to get a most distinct notion of what it is that you are not to do.

SIR HUGH CAIRNS. Just so; it is with that view I am asking your lordship's attention to these matters.

LORD CHIEF BARON. Considerable confusion has arisen, and much of what is said to be the confusion of the act arises from confounding the act that is not to be done with the expressions used in forbidding an attempt to do it.

SIR HUGH CAIRNS. Just so, and I may take leave to say, by way of anticipation, it will be found if we can once arrive at a clear and distinct understanding of what I may call the principal act prohibited, five minutes consideration will scatter all the rubbish that has been talked—I do not use the expression with reference to anything which has fallen from my learned friends, but I mean the rubbish talked out of doors—about attempts and endeavors, and commencements and assistances, which altogether assumes that every one of those things creates a new offense, different in character and form from the principal offense, whereas every one of them must range itself under the principal offense—they cannot go any higher than the principal offense can go. The fifth section seems to me, with reference to our investigation of what is the principal offense, of very great importance. It is at page 24: “If any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel, in the service of any foreign prince, or state, or of any colony, district, or people or belonging to the subjects or citizens of any such prince, or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, by adding to” (augmenting, that is to say) “the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars, and be imprisoned not more than one year.” Observe what a flood of light this pours upon the whole legislation, and how completely this legislation agrees with those rules preceding it, which I called your lordships' attention to. Here you are dealing with a case of a ship as to the destination and object of which there is no possible doubt. She is a ship with letters of marque, or a privateer, or a national ship of war, there can be no doubt about what she is to do; no doubt about the end for which she is created; no doubt about why she is found on the sea, and why is it she comes into a port. All those things are matters not left to speculation or inquiry, or to investigation by suspicion, or by proof, or in any other way; it is assumed there that you have to deal with a ship of war, either belonging to, or at all events in the interest of one of the belligerent parties. She comes into a port of the United States. Is it unlawful to equip her? Nothing of the kind; it is unlawful to augment her armed force by adding to the guns, by changing them for larger or other guns, but if there be any equipment (and we all know there is abundance of equipment) not applicable solely for warlike purposes, she is quite at liberty to have that equipment, she is quite at liberty to be supplied with it; she may come in and get it and sail away, and no person is entitled to interfere; in other words, the very thing prescribed by the rule laid down by Washington is to be attended to, you are to look at the character of the equipment, and, just as the former section said, you are not to equip a ship as a ship of war, by which I understand it to mean, you are not to equip a ship with the distinctive features of an equipment which is solely applicable for war, so, where you have a ship admittedly a ship of war to deal with, you may equip her, but you may not equip her with an equipment which is solely applicable to war.

Then we have still, my lords, some very important additional light on the latter clauses of the statute. I pass over the sixth and seventh, the marginal notes of which sufficiently explain them. “Setting on foot within the United States any military expedition against a friendly power” is illegal, and the district courts are to have cognizance of complaints. Then by the eighth section the President may employ the forces or the militia for suppressing such expeditions. That does not seem to have been thought necessary in the English act of Parliament, I suppose it is because our common law would amply supply that power. By the ninth section, the President may employ

* See page 145.

the forces or the militia to compel the departure of vessels. I pass over all those and now ask your lordships' attention to the tenth and eleventh sections. What does the tenth section say? "That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign province or state, or of any colony, district, or people with whom the United States are at peace."

That is a clause which, as my learned friend reminds me, (and I am much obliged to my learned friend for reminding me of it,) was inserted in the act of 1818, it not being in the old act; that perhaps makes it the more important, because it is a clause inserted after the former act had been in existence for twenty-six years, and had, one may say, obtained a certain amount of judicial construction. This is a clause put into the act of 1818, and of course one must assume in harmony with all the rest of the sections in the act of Congress, and throwing important light upon their construction. Your lordships will observe that the condition of the bond is not that the ship shall not be employed to cruise or commit hostilities generally, but that she shall not be employed by the owners; that is to say, the owners, if she belong wholly or in part to citizens of the United States, may transfer her, and she may be employed by others not citizens of the United States to cruise or commit hostilities. The condition of the bond would not be affected; but the part of the section I am anxious to call your lordships' particular attention to is this. What is the vessel as to which the bond can be demanded? A ship is going to sail out of a port of the United States, the collector of customs says—Well, I do not quite like the look of that vessel or what I know about her, you must give me a bond that she shall not be employed by the owner to cruise or commit hostilities. What does the owner say? the owner says, for what ship are you entitled to ask a bond; are you entitled to ask a bond because you choose to say you do not like the look of the ship or have reason to suppose that hereafter she may become a ship of war, or be turned into a ship of war, and are you entitled to take a bond that she shall not be turned into a ship of war? Nothing of the kind. Before the collector of customs can establish his right to ask for the bond, he must show that the ship is an armed ship, and it is only in respect of the ship being an armed ship sailing out of a port of the United States that a bond can be taken. But observe, my lords, if it is desirable in any case to take a bond by way of security and to give that peculiar power, that somewhat tyrannical power, to the collector of customs to demand a bond, surely, of all cases where that is necessary, the very case where it is most required is not where the matter is *patens ad oculos*, and where the collector might proceed on the other clause of the act, where the case was complete of a ship of war sailing out of the port, but rather a case where, without having the proof complete to his eye, he would be able to suggest some reason for supposing some use was intended to be made of the ship afterward which would change its condition from what it then was into that of a ship of war, but he cannot do it—he has no right to demur to the departure of the ship till the owners have given a bond, unless he can show that the ship is an armed ship about to issue out of a port of the United States.

Let us couple that with the eleventh section, which is also new, and therefore the argument is the more important because these are clauses added to the act of Parliament after it had been in existence nearly thirty years, and when its scope must have been well understood and appreciated. "That the collectors of the customs be and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes." This is a new class of vessel; this is not an armed vessel. Let us see under what circumstances they are authorized to detain "any vessel manifestly built for warlike purposes and about to depart from the United States." Not generally; they cannot detain, generally, any vessel "manifestly built for warlike purposes," but "any vessel manifestly built for warlike purposes" "of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board or other circumstances shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace until the decision of the President be had thereon," or until a bond be given.

Now, my lords, this again, I venture to think, gives us a very large amount of light upon the general object and scope of the statute, because I venture to say again here if there be an occasion with reference to which it is desirable to give authority to the collector of customs to detain upon suspicion, if the scope of the act is broader than I have suggested, if the scope of the act is this, that it is an offense to do anything to the ship (I will not use any specific term) in a port of the United States which can afterward be made available for the use of the ship when she becomes a ship of war, if that is the scope of the legislation, then surely the occasion on which it would be

desirable to give the collector of customs authority to detain a vessel on suspicion would be this, not when the ship had those things on board, the possession of which on board clearly brought her within the act of Congress, but an occasion on which the collector of customs would not have those visible proofs to appeal to, but would have simply that which is indicated in the beginning of the section, namely, when he could say, "Here is a ship which, though it has no warlike equipment, yet I cannot help thinking is a ship manifestly built for warlike purposes that hereafter may be turned into a vessel of war. I now wish to detain her, in order that the question may be tried whether that is meant to be done." But he has no authority of that kind. No amount of suspicion will justify detention in a case of that sort. The cases in which a bond can be required, and the cases in which the ship can be detained, being express, other cases are negative, and among others this clearly is negative: the right to detain or the right to require a bond from the owner of the ship merely upon a suspicion; and I will go further, merely upon proof to be adduced that hereafter she is to be converted into a vessel of war. If manifestly built and intended for warlike purposes, and if her cargo consists principally of arms and munitions of war, and if the number of men shipped on board, or other circumstances over and above those which are cardinal and essential ingredients in the case, the collector of customs, if those things combine, may detain the ship until the decision of the President be known, or until a bond be given. How is it possible to contend, after those sections are read, that the scope or ambit of the general section meant more than that which is indicated by these sections, namely, to provide for the case where you are equipping within the ports of America a ship as a vessel of war; meaning by that, equipping her with things that are essential and distinguishing characteristics of a vessel of war.

Mr. BARON CHANNELL. The tenth section makes no reference to intent. The eleventh section refers to intent to be ascertained by circumstances, either by appeal to the President, or if they are difficult to be got at, by getting a bond.

Mr. BARON BRAMWELL. The tenth section applies to an armed ship; and the eleventh section evidently applies to a ship which would not be comprehended within the tenth section, and which is not armed.

SIR HUGH CAIRNS. Which has arms and munitions of war on board.

Mr. BARON BRAMWELL. One would suppose from the two sections that it was intended to require a bond in the case of a vessel which could not be said to be armed, which might be something short of being an armed vessel, because if she were an armed vessel she would be within the tenth section.

SIR HUGH CAIRNS. Clearly so; if your lordships look at the last words of section eleven in the cases where detention of vessels is allowed, the detention is to take place "until the decision of the President be had thereon or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section." Therefore a bond as it were *in simili casu* is to be given under the eleventh section.

Mr. BARON BRAMWELL. I am afraid I did not make myself intelligible. What I meant was that section eleven seems to be directed against a vessel which could not be said to be the armed vessel in the tenth section; and consequently this eleventh section of the American foreign enlistment act applies to vessels not armed.

SIR HUGH CAIRNS. Yes, my lord. Vessels not armed, but having those other qualifications which are mentioned in the eleventh section, namely, carrying a cargo consisting principally of arms and munitions of war, coupled with this, that she is manifestly built for warlike purposes, and that the number of men shipped on board, or other circumstances, make it probable that she is intended to cruise or commit hostilities. If I might describe it in other words, the eleventh section seems to provide against the case of a ship manifestly built for warlike purposes, carrying out her own equipment for warlike purposes—carrying it out as if it was cargo, and coupled with the presence of such a number of men as distinctly mark her as a ship intended for warlike purposes.

Now, my lords, having troubled your lordships with the words of the American act, it would be proper at this stage of the argument to refer you to those American authorities, so far as we have them, upon the construction of this act of Congress, and the first, I believe, in point of time, or very nearly the first, is a case reported in Bee's American Admiralty Reports, page 76. I should mention that Bee is not the reporter; they are the decisions of an admiralty judge of that name, of considerable reputation in America.

Mr. BARON CHANNELL. Is it the case of Moodie against the ship Brothers?

SIR HUGH CAIRNS. Yes, Moodie against the ship Brothers. The question arose in this way: A privateer had taken a prize; she was brought in for adjudication, and Mr. Moodie, who was the English consul, and in whose name all the proceedings during the beginning of the war were taken, objected to the condemnation upon the ground that the privateer had been fitted out in a port of the United States, in contravention of the American act of Congress, which would have made the capture illegal if it could have been proved. "The prize, upon the arrival in this port, was with the cargo libelled

by the British consul, Mr. Moodie, who, among other causes, alleges that the privateer" (the whole of this report is the judgment of the court) "was originally fitted out in the port of Charleston, or augmented in her warlike force, contrary to the act of Congress and law of neutrality of nations; he therefore claims restitution of the captured vessel. The claimants cannot deny that the privateer was originally fitted, armed, or manned within any of the ports of the United States; or that she received therein any augmentation or addition solely applicable to purposes of war. They produce a copy of her commission from Leveau, and plead the seventeenth article of the treaty with France in bar to the interference of this court in this cause. Several exhibits have been filed to show that the captured vessel and cargo are British property, and one exhibit shows that the privateer was formerly an armed vessel in the service of the King of Spain, and then mounted eighteen guns; that she was captured by the Montague, French privateer, and brought as a prize into this port, from whence she afterward departed with fewer guns than she had on her coming in." It was agreed between the parties that certain evidence should be taken. The judge continues: "I have already, by my decree in the case of the Courier, declared my opinion of this privateer, but have reconsidered the evidence with great care, Messrs. Wallace, Libby, Williams, Carpenter, and Weyman, and the collector, and they all agree that she was a complete privateer when she first arrived there; she had then fourteen guns on her main-deck, two cohorns forward, and swivels on her quarter-deck. They also agree that she received no augmentation of force here; she had been much injured in her engagement with La Montagne, and was compelled to take off her quarter-deck. She then went to sea, returned dismasted, and took a new mast," (that was in an American port,) "but none of the witnesses saw any additional equipments. Ingram, who worked on her, says she had her quarter-deck taken down, her waist repaired, and two ports cut therein; that she was an armed vessel when she arrived, and was repaired as a privateer. The question then is wholly as to the cutting of two new ports when her waist was repaired. This arises out of Ingram's testimony, which is at variance with that of Williams, Libby, and Carpenter, and positively contradicted by the oath of the claimants, who swear that the repairs she received in this port were necessary to her safety of sailing, but not at all applicable to war." The learned judge was convinced that that was the issue to be decided upon the evidence, whether the repairs or equipments she had received were at all applicable to war. "They say that she actually went to sea with fewer guns than she had when she arrived as a prize. Admitting, then, for the sake of recoupling Ingram's testimony with that of the other witnesses, and with this oath of the claimants, that two of her ports in the waist were altered, this will not amount to any additional equipments, nor can it be considered as a breach of neutrality. If a prosecution had been instituted under the act of the 5th of June, no forfeiture could have been adjudged for so trifling an alteration. Upon the whole, I retain my opinion, and that upon mature deliberation. I therefore admit the relevancy of the plea in bar." Of course it is no part of my business to consider whether, upon the facts before that learned judge, he was right or wrong in his conclusion as to the facts; all I refer to the case for is this: the parties thought and the judge thought that that which he had to determine was, were there equipments put on board the ship in an American port solely applicable to war or not? he thought there were not. That was what he thought was the construction of the act and the matter he had to consider, and with that accordingly he dealt in the way I have mentioned.

My lords, I ought to say (your lordships will pardon me for it) that I omitted before I commenced these American cases to give your lordships the reference which I promised to do, namely, to the authority upon international law, showing this, that the rules laid down by Washington's government and the American act of Congress were declaratory of, and in accordance with, the antecedent rules of international law. I promised to give your lordships that authority as a justification for my referring to those rules, which otherwise perhaps would not have been relevant to the argument; that is laid down in the clearest way by Chancellor Kent in the same book to which I referred before. I refer to the marginal paging 122. He says: 'The government of the United States was warranted by the law and practice of nations in the declarations made in 1793 of the rules of neutrality, which were particularly recognized as necessary to be observed by the belligerent powers in their intercourse with this country.' Those are the rules of 1793 which I mentioned. "These rules were that the original arming or equipping of vessels in our ports by any of the powers at war for military service was unlawful, and no such vessel was entitled to an asylum in our ports. The equipment by them of government vessels of war, in matters which, if done to other vessels, would be applicable equally to commerce or war, was lawful. The equipment by them of vessels fitted for merchandise and war, and applicable to either, was lawful; but if it were of a nature solely applicable to war, it was unlawful. And if the armed vessel of one nation should depart from our jurisdiction, no armed vessel being within the same, and belonging to an adverse belligerent power, shall depart until twenty-four hours after the former without being deemed to have violated the law of nations. Congress

'have repeatedly by statute made suitable provision for the support and due observance of similar rules of neutrality, and given sanction to the principle of them as being founded in the universal law of nations. It is declared to be a misdemeanor." And then Mr. Kent goes on to recite the foreign enlistment act of Congress, which I have already referred to, reciting it in this way, that this was an instance of Congress being supported by municipal regulation for the observance of those rules of neutrality which have been justified by, and have been founded upon, the principles of international law.

My lords, that is an authority I said would connect, as I thought, in your lordships' minds the whole chain which I have given, first the declaration, and then the act of Congress, showing that this declaration and this act of Congress were simply an affirmation of the rule of international law; and I think I might pause for a moment there to observe, that perhaps now at this stage of the argument I might be in a position to advert to a suggestion which fell from Mr. Baron Bramwell, when he asked me whether I proposed to consider, upon the rule of international law alone as apart from municipal law, the case that might be put of two ships leaving a neutral port, the one unarmed and unequipped for war, and the other having on board arms and warlike equipments, proposed to be afterward transferred to the first. The answer I should give to that is this: The definition in these rules of the principle of international law is clear and express. The gist of the whole is doing the act which is prohibited within the neutral territory. The act prohibited is the equipment of the ship, which means putting equipments into their place upon the ship; no other act is prohibited, and no other act can be brought within the scope of the act so defined. That may be an extreme case, and I will deal with extreme cases by and by, and show your lordships what extreme cases there are upon all sides upon a question of this kind. However, if it be an extreme case, I say it is not in my humble judgment contrary to the principles of international law to send out an unarmed ship from a neutral port, a ship unarmed and unequipped for any hostile purpose, using those terms as I have explained them, and either along with her, or after her, or before her, sending out of that same port another ship with those articles on board called contraband or munitions of war, though the object may be in a foreign port or on the high seas or anywhere else out of the neutral jurisdiction to transfer the one from the other and to put the contents of the second ship on board of the first ship. It is one of those matters which leaves entirely every rule of international unviolated. The neutral territory is not violated—nothing issues out of the neutral territory in a position which can be called a position for committing hostilities. There must be an act done in that which is unneutral ground, either the high seas or the hostile territory, and there it is that the right of the belligerent comes in to prevent and intercept that act being done, if the belligerent desires to do it.

MR. BARON BRAMWELL. No doubt directly the two vessels get out, the one that is to receive the armament and the other that has the armament on board, both being defenseless, both might be taken by the belligerent, they would have no rights or privileges; but if that is not a breach of the law, it certainly looks very like an evasion.

LORD CHIEF BARON. The answer may be that there is no equitable construction of a penal statute.

SIR HUGH CAIRNS. The moment it is said it is an evasion, the case is conceded.

MR. BARON BRAMWELL. The word "evasion" has two meanings. You may evade a positive enactment; for instance, if an act says that a man receiving £100 a year shall pay income tax, he may evade that by returning his income at £99 19s. 11½d. But when you have not a written law, but law depending upon principle, where you may say there is no law but the spirit of law, if you talk about evading that you infringe it.

LORD CHIEF BARON. That would be true, and is true, in the case of many acts of Parliament which are prohibitory, and which receive a construction from the courts according to their spirit—no doubt about that. But the moment you come to a question of crime, you must be within the very words of the act. It will not do to say you are doing that which is as bad; it may be as bad, but it is not the thing.

SIR HUGH CAIRNS. *A multo fortiori*, where you are dealing with that which is made a crime by act of Parliament in certain circumstances, but which is no *malum in se*.

MR. BARON BRAMWELL. I do not like to anticipate your argument; but I was addressing myself to the state of things which I thought your remark was directed to.

SIR HUGH CAIRNS. I did not misunderstand your lordship's observation, but I was following for a moment the point put by the Chief Baron. I understood Mr. Baron Bramwell to distinguish between an offense to be brought under the municipal law, where he would agree it must be brought legally within the words, and an offense which is supposed to be one by international law, where, according to Mr. Baron Bramwell's suggestion, there might be a larger latitude and a larger scope.

MR. BARON BRAMWELL. I am reluctant to interrupt you by any lengthened statement; but I did not intend to propound any opinion; I only wished you to address yourself to that point. As it strikes me, it is doubtful; but what I should like information upon

would be this, Does international law prohibit what is (one really cannot disguise it) a quibble in practice, that two vessels may lie side by side, may wait for a fog, may slip out, and when about three or four miles from shore, that which was an unarmed vessel may become an armed vessel, and may immediately commit hostilities against the belligerent?

SIR HUGH CAIRNS. I quite understand your lordship as putting this matter to test the rule of international law; but observe how wide we get the moment we pass the letter of the international law, just as we do the moment we pass the letter of the municipal law; because another case might be put which would come very near that which your lordship has supposed. Suppose that a belligerent, having got a vessel wholly unarmed and wholly unsuitable for war, without equipment, wishes to have her equipments put on board, and suppose that belligerent sends the ship which is so intended to be dealt with, in safety, having escaped capture, and anchors her inside the three miles of neutral territory, waits till the equipment (which clearly, so long as it is in preparation upon the neutral dry ground, is simply in the character of munitions of war, and contraband of war) is ready, waits till that is shipped, then drops outside the neutral line just immediately before an outgoing ship which takes the contents of the other on board; there is a case where you have not an attempt at doing any act within the neutral territory with regard to the ship waiting for equipment, and yet the consequences are exactly the same, the same process is performed as in the other case, and it might be said that is against the statute, but no one would contend for a moment that it was against the law. I refer simply, at present, (I will return to them before I have done,) to extreme cases which may be supposed in a matter of this kind. At present I merely take leave to suggest, by way of answer to the suggestion of his lordship, that upon these rules of international law to which I have referred, and the American declaration, they are rules of positive law, so far as they go; they are rules of positive law not to be extended beyond the expressions in them; and it is no doubt owing to the very circumstance of the neutral territory being divided by a sharp line and things being lawful outside of it which are not lawful within it, that the whole principle and reasoning of cases, like that before Lord Stowell of the Two Brothers, assume that arbitrary cases will arise and must arise, where, upon one side of the line, you will be safe, and where, on the other side of the line, you will be unsafe, and that a sharp line must be drawn clearly as the dividing line between the two classes of cases.

Having by your lordships' permission turned aside for a moment to supply that authority from Kent's book, I now return to the next case upon this act in the American authorities. There was a trial for a misdemeanor under this act, in the year 1795, of a Frenchman named Guinet, reported in Wharton's American State Trials, page 93; and before referring to any expressions found in that report, I may tell your lordships that there were in that case two questions which arose: the one was whether there was an equipment within the terms of the act of Congress within the American jurisdiction; the other was whether there was an intent on the part of Guinet, the prisoner, to join in using the ship as a privateer. As the facts came out they were held by the jury to have been proved; it was clear to demonstration that the equipment was an equipment which made the ship an armed ship ready to commit hostilities before she left American jurisdiction; therefore no question arose as to an equipment not of a warlike character. The case would be no authority upon that point, nor do I believe there is any authority either in America or in this country upon that point. The other part of the case depended upon the evidence, which I will not refer to at any length, to show that Guinet was a person knowingly acting for the purpose of joining in the cruise of this privateer, and using her as an armed vessel. The indictment was that he was concerned in furnishing, fitting out and arming a certain ship called *Les Jumeaux* lying at the port of Philadelphia. And the evidence upon the point is stated thus at page 95. The master warden it appears, who was a sort of custom-house officer, went to examine the ship. "The master warden found the vessel in great forwardness, her twenty ports open, her upper deck changed, &c., and four iron guns on carriages, with two swivels, were lying on the adjoining wharf. He therefore desired the carpenter to desist from working any further on the vessel, and made a report on the subject to the Secretary of War, who directed that all the recent equipments of a warlike nature should be dismantled and the vessel restored to the state in which she was when she arrived. The master warden accordingly caused the portholes to be shut up, and even refused to allow any ring-bolts to be fixed in the vessel. A few days before she left the port a witness said he saw four guns in her hatchway; the carpenter who repaired her said she carried with her from the wharf the four guns and two swivels that she brought in; and, according to the custom-house entry, she sailed from the city in ballast, having nothing in her hold but provisions, water-casks, and wood, for ship's use." That is the way the owner had entered her clearance at the custom-house; she was sailing with provisions, water-casks, and wood for the ship's use. Then it appeared likewise that she came to at Wilmington, (also within the jurisdiction;) "that an apprentice to the pilot on board of her was left behind, in order to carry on board some guns, cordage, and bedding; that accordingly he, in company with his master," (who had returned from Wilming-

ten,) piloted the vessel, and two black boys carried and delivered on board three or four carriage guns; that the witness (who did not go on board) saw no appearance of other guns, which he could have done, though it was dark, had there been port-holes and the guns run out; that the pilot-boat returned to Philadelphia the same night for the purpose of carrying to the ship some of her crew, and two or three hogsheds; that the hogsheds were put on board the pilot-boat the next day, and being there opened were found to be filled with a number of little kegs, the contents of which were unknown. That at the same time twenty or thirty muskets, a number of lanterns, cans, &c., were put on board; that the whole of this transaction took place in the night time, between 10 and 11 o'clock; and that during the same night the pilot-boat, with three or four Frenchmen on board, pushed from the wharf and sailed down to Wilmington, where the vessel still lay; that the things brought in the pilot-boat being put on board the ship, she got under way and proceeded to Reedy Island; that there were then between thirty and forty persons on board; that the witness could not perceive that she had any guns or gun carriages on deck, though this might be owing to the dark; that the vessel dropped down to New Castle, and the pilot-boat was again sent to Philadelphia by order of an officer (as it would seem) belonging to the vessel, who met the witness there, and between 9 and 10 o'clock at night they put one or two trunks and a large box on board the pilot-boat at South street wharf; that there were then lying on the wharf six guns without carriages, which Guinet told the witness he must take on board the pilot-boat at 12 o'clock at night; that the masts were so weak that the witness was at first afraid to undertake it; he went, however, to borrow a runner and tackle from an adjoining sloop; that Guinet concluded to postpone heaving the guns into the boat till the next evening; and in the intermediate time the marshal seized the guns and boat, and apprehended the parties." The arguments of counsel on both sides are given, and I observe that the district attorney for the States, that is, as we should say, the counsel for the Crown, is said to contend that "there is evidence that the vessel sailed from the port with the guns that she brought into port; that four other guns with military stores were afterward put on board of her, and that she had a crew of thirty or forty persons; it is arming a vessel when arms are put on board, she being on her passage, and it cannot be material that those arms should be arranged in a particular manner." Then he addressed himself to the question of design and of intent, which of course would depend upon the facts proved against Mr. Guinet, which I have nothing at present to say to.

Mr. BARON CHANNELL. Guinet was convicted, I think.

SIR HUGH CAIRNS. Yes, he was convicted, my lord. In pursuing his argument the district attorney says: "Being converted from a merchant vessel carrying a few guns for self-defense into a privateer armed for hostilities, it is clearly an original outfit within the meaning of the law." It is clearly an original outfit within the meaning, and of course such an outfit as would be sufficient if it had taken place for the first time. Then Mr. Justice Paterson in charging the jury says this: "Much has been said upon the construction of the third and fourth sections of the act of Congress, but the court is clearly of opinion that the third section was meant to include all cases of vessels armed within our ports by one of the belligerent powers to act as cruisers against another belligerent power in peace with the United States. Converting a ship from her original destination with intent to commit hostilities, or, in other words, converting a merchant's ship into a vessel of war, must be deemed an original outfit," (that of course means converting it within the jurisdiction,) "for the act would otherwise become nugatory and inoperative. It is the conversion from the peaceable use to the warlike purpose that constitutes the offense." It is the conversion which, again I say, must mean a conversion within the dominion of the State. Then he says: "The vessel in question arrived in this port with a cargo of coffee and sugar from the West Indies, and so appears to have been employed by her owner with a view to merchandise and not with a view to war. The inquiry therefore is limited to this consideration, whether after her arrival she was fitted out in order to cruise against any foreign nation at peace with the United States. It is true she left the port with only four guns, the number that she had brought into the port, but it is equally true that when she had dropped to some distance below she took on board three or four guns more, a number of muskets, water casks, &c., and it is manifest that other guns were ready to be sent to her by the pilot-boat. These circumstances clearly prove a conversion from the original commercial design of the vessel to a design of cruising against the enemies of France, and of course against a nation at peace with the United States, since the United States are at peace with all the world." Then he says that it cannot be contended that the articles put on board were articles of merchandise; for, if that had been the case, they would have been mentioned in the clearance at the custom-house; therefore there could be no doubt as to the character of the equipments put on board. "If they were not to be used for merchandise, the inference is inevitable, that they were to be used for war. No man would proclaim on the house-top that he intended to fit out a privateer; the intention must be collected from all the circumstances of the transaction, which the jury will investigate and on which they must decide. But if they are of opinion that

it was intended to convert this vessel from a merchant ship into a cruiser, every man who was knowingly concerned in so doing is guilty in the contemplation of the law; that means, that if it was intended to convert her from a merchant ship into a cruiser within the jurisdiction. It is absurd to think there would be any other offence.

The purpose for which I refer to this case is this: I do not, of course, care for it at all with regard to the question of intent—I mean the intent of using for one belligerent against another; for the latter part of the case, which I have not come to, will depend upon the evidence in each particular case. I refer to that case for this other purpose. Here was a case in which, if the argument which has been suggested on the other side (for the argument, of course, I have not heard) were to prevail, the court and all the counsel were occupying themselves in the most unnecessary and superfluous way it is possible to imagine. If the argument upon the other side is right, namely, that if you equip in any way, and to any extent whatever, within the dominion, a ship as to which there is an intent at some other time and at some other stage to convert her into a vessel of war, or to make her a vessel of war, you commit an offence, what on earth was the use of the elaborate evidence which was produced here, and the elaborate consideration which the learned judge gave to the evidence to show that the equipment in this case was of a warlike nature? because that is the point which all parties addressed themselves to consider. They took it by stages. They said, it is true she has not the guns on board when she is in port; but she drops down and she gets the guns on board at another port within the jurisdiction, and so also other equipments which are of a warlike character. But no person denied that during her stay in the United States she had been, in the general course of equipment, equipped not of a warlike character; those warlike equipments were superadded to the rest; and at length the judge and all the counsel agreed to take the case as turning upon that, whether there had been, using the words of the judge, a conversion of the ship into a ship of war by virtue of those equipments. I say all that was perfectly idle, if any kind of equipment was meant, not of a warlike character, but as to which there was an intent afterward to use it for warlike purposes. I say that that is not the construction, and I say that it was not assumed to be the construction in the trial of *Guinet*, otherwise one-half of the trouble which was bestowed upon the trial would have been thrown away.

My lord, there is one more American case upon this point, to which I would beg leave to refer, namely, the case of the United States against *Quincy*, which is printed at the end of the volume before your lordships, at page 62* of the Appendix. There is a very long, and not quite an accurate marginal note of the case, and I think your lordships will more readily follow what was the point actually raised and decided, by my referring you to the part of report itself. Your lordships will find the indictment and the twelve counts which the matter turned upon at page 64. "The jurors presented that *Quincy*, within the limits of the United States and the jurisdiction of the United States, was knowingly concerned in the fitting out of a certain vessel called the *Bolivar*, with the intent that that vessel should be employed in the service of a foreign people, &c.," in hostilities; and the allegation was, that he was knowingly concerned in the fitting out of this vessel—those were the words used. Then the evidence which was given your lordships will find at page 65. The *Bolivar* was originally a Maryland pilot-boat of sixty or seventy tons. Evidence is given of the repairing and fitting out of this schooner in the port of Baltimore. The work was done at the request of *Henry Armstrong* and of the defendant, who superintended the same; she was fitted with sails and masts larger than were required for a merchant vessel; and she was altered in a manner to suit her for carrying passengers, and with a port for a gun. "It was in proof that the *Bolivar* sailed from Baltimore for *St. Thomas* on the 27th of September, 1827, having on board provisions, thirty-two water casks, one gun-carriage and slide, a box of muskets, and thirteen kegs of gunpowder; and after a bond had been given by *John H. Patterson* as master, and *Stiles* and *Victor Valette*, of Baltimore, as owners, not to commit hostilities against the subjects or property of any prince or state, or of any colony, district, or people with whom the United States were at peace"—a bond, therefore, that must have provided, upon the footing of either the tenth or eleventh section of the American act, either that she was an armed vessel, or that she was a vessel manifestly adapted for warlike purposes, of which the cargo consisted of munitions of war, and as to which there was evidence by the number of persons on board, or otherwise, that she was so intended. The bond must have proceeded upon that footing. Now, my lord, let me stop there for the purpose of showing that after that statement of the evidence there is not to be found in that case that which would make it an authority for the Crown in this case, as is suggested in moving for this rule, because this is a case which, from what I have read, proceeded upon the assumption, upon the common ground, that there was a fitting out peculiarly adapted for warlike purposes—that is to say, a fitting out of a distinctive character, namely, a port for a gun cut and made, a gun-carriage and slide on board, and munitions of war on board in the shape of gunpowder and musketry. There was, therefore, a fitting out in the first

* See 6 Peters, pp. 445, 469. Ed. 1832.

place, and that a fitting out of that distinctive character which would be suitable for a man-of-war, and not suitable for anything else. Now, my lords, what was the point which was argued in that case? The point your lordships will find to be this. There was an ingenious argument alleged by counsel for the prisoner, that because the American act, when speaking of the principal offense, defined the principal offense to be, if any person shall equip and arm, fit out and arm, for any warlike purpose, therefore, said the counsel for the prisoner, the secondary offense of being concerned in, &c., cannot be committed unless you can show that he was concerned in fitting out and arming. There must be both—both must combine. It will not be sufficient to show a fitting out even for warlike purposes; there must be not only a fitting out, but a fitting out and arming. Then a great deal of consideration was given to the act upon that point, and the court arrived at the conclusion, rather a faulty conclusion, I should say, that it assumed that it might well be that if you were indicting the person who may be called the principal, that is to say, the person who was actually fitting out, &c., you would have to show, as against him, that he both fitted out and armed; but that if you were indicting a person, the accessory in the second degree, it would be sufficient to show with regard to him, either that he was concerned in the fitting out or in the arming; but the decision did not touch the point which I am endeavoring to bring before your lordships, and the only point which could make it material to the present case, namely, it did not show or attempt to suggest that any fitting out short of a fitting out which would be the distinctive fitting out of a vessel of war would be sufficient to constitute an offense under the act of Congress.

The way in which the question was brought before the court was this. Certain directions of the jury were moved for, which seems to have been the habit of the American courts, and the defendant moved the circuit court that this direction should be given to the jury: "That if the jury believe that when the Bolivar left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, she was not armed, or at all prepared for war, or in a condition to commit hostilities, the verdict must be for the traverser." I pass over 2, 3, and 4, which relate to a different matter, and then at the bottom of page 66, the counter direction, which the counsel for the United States moved for, was this: "That if the jury found from the evidence that the traverser was within the district of Maryland knowingly concerned in the fitting out of the privateer Bolivar, alias Les Dames Argentinas, with intent that such vessel should be employed in the service of the United Provinces of Rio de la Plata to commit hostilities, or to cruise and to commit hostilities, &c., then the traverser has been guilty of a violation of the third section of the act of Congress of the 20th April, 1818, which punishes certain offenses against the United States, although the jury should further find that the equipments of said privateer were not complete within the United States, and that the cruise did not actually commence until men were recruited and further equipments were made at the island of St. Thomas, in the West Indies; and should further find that the Bolivar, on her voyage from Baltimore to St. Thomas, had no large gun, no flints, nor any cannon or musket balls, and that the muskets and sabres were, during the voyage, nailed up in boxes." Therefore the whole thing assumes that the jury are to find that there was a fitting out. That was the foundation of the case. Neither direction could be available nor could be required unless the jury were to find that there was a fitting out. The question of what fitting out meant upon the construction of the act of Congress was not argued, and could not have been argued, for this manifest reason, that those whose duty it would have been to contend that fitting out meant fitting out with equipments distinctly of a warlike character, could not have so contended to any useful end in the face of that evidence, because the evidence that the fitting out was fitting out with equipments distinctly of a warlike character was enough—that there was a fitting out, and in that shape of a distinctly warlike character—and the point and the only point raised was this: Said the counsel for the prisoner: "You are bound to show that within the district there was an actual and a complete arming." "No," said the counsel for the United States, "that is not necessary; if you show that there was a fitting out of a warlike character, that is enough."

Then the view of the court upon that point was this; it is about the middle of page 77: "On the part of the defendant, it is contended that the vessel must be fitted out and armed, if not complete, so far at least as to be prepared for war, or, if not complete, so far at least as to be prepared for war, or in a condition to commit hostilities. We do not think this is the true construction of the act. It has been argued that, although the offense created by the act is a misdemeanor, and there cannot, legally speaking, be principal and accessory, yet the act evidently contemplates two distinct classes of offenders; the principal actors, who are directly engaged in preparing the vessel, and another class who, though not the chief actors, are in some way concerned in the preparation. The act in this respect may not be drawn with very great perspicuity; but should the view taken of it by the defendant's counsel be deemed correct, (which, however, we do not admit,) it is not perceived how it can affect the present case; for the indictment, according to this construction, places the defendant in a secondary class of offenders. He is only charged with being knowingly concerned in the fitting

out of the vessel with intent that she should be employed, &c. To bring him within the words of the act it is not necessary to charge him with being concerned in fitting out and arming; the words of the act are fitting out or arming. Either will constitute the offense," (but there is no definition at all or no argument as to what fitting out meant.) "But it said such fitting out must be of a vessel armed and in a condition to commit hostilities, otherwise the minor actor may be guilty where the greater would not; for as to the latter, there must be a fitting out and arming in order to bring him within the law. If this construction of the act be well founded, the indictment ought to charge that the defendant was concerned in fitting out the Bolivar, being a vessel fitted out and armed, &c.; but this, we apprehend, is not required; it would be going beyond the plain meaning of the words used in defining the offense. It is sufficient if the indictment charges the offense in the words of the act, and it cannot be necessary to prove what is not charged. It is true that, with respect to those who have been denominated at the bar the chief actors, the law would seem to make it necessary that they should be charged with fitting out *and* arming. These words may require that both should concur, and the vessel be put in a condition to commit hostilities, in order to bring her within the law. But an attempt to fit out *and* arm is made an offense. This is certainly doing something short of a complete fitting out and arming. To attempt to do an act does not, either in law or common parlance, imply a completion of the act of any definite progress toward it. Any effort or endeavor to effect it will satisfy the terms of the law. This varied phraseology in the law was probably employed with a view to embrace all persons of every description who might be engaged, directly or indirectly, in preparing vessels with intent that they should be employed in committing hostilities against any powers with whom the United States were at peace. Different degrees of criminality will necessarily attach to persons thus engaged. Hence the great latitude given to the courts in affixing the punishment, namely, a fine not more than \$10,000, and imprisonment not more than three years. We are accordingly of opinion, that it is not necessary that the jury should believe or find that the Bolivar when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment." That is the point and the only point decided. The jury need not find, in order to comply with the American act of Congress, that the schooner was armed, and they need not find that she was ready to commit hostilities; but the character of the equipment or the fitting out which is put on board is not touched by the judgment of the court, and could not be touched by the judgment of the court, because the character of the fitting out, which was proved in evidence clearly and beyond dispute, was a fitting out of a warlike character.

Now, my lords, I believe that those cases to which I have taken the liberty of referring will be found to be, if not all the American cases upon the subject, yet all the American cases which legitimately or properly bear upon the argument before your lordships.

With these observations, my lord, I pass from the American act of Congress, and from the authorities upon it, and I now proceed to that which is still more important to the present case, namely, the consideration of the English act of Parliament. Here again, for the purpose, not of altering what may be the legitimate construction of the English act of Parliament, but for the purpose of putting your lordships in possession of the circumstances as a matter of history under which it was passed; and for the purpose of showing its compliance or intended compliance with the rules of international law, I shall take leave in the first place very shortly to refer your lordships to what those circumstances of history were, under which that act of Parliament was passed. My lord, they may be stated very briefly from a history covering the period, namely, Sir Archibald Alison's history. In the first volume of his second History of Europe, at section 95, he refers to the very great popular excitement which existed in the year in which this act of Parliament (1819) was passed, and to the circumstance that the Spanish colonies, as is well known to your lordships, had then revolted from the mother country; that from the strong sympathy felt in this country with the revolted colonies, and from the desire which certain persons had to engage in military or naval service, very large equipments, both military and naval, were being prepared in England for the purpose of assisting and aiding the revolted colonies; and that it had got to the length of actual armaments, actually enlisted soldiers, marshaled and drilled in this country, and actual armaments prepared in the ports of this country. In chapter 4, section 95, the historian says, "Ever since the contest between the splendid colonies of Spain and the mother country had begun in 1810," "it had been regarded with warm interest in Great Britain, partly in consequence of the strong and instinctive attachment of its inhabitants to the cause of freedom and sympathy with all who are engaged in asserting it, partly in consequence of extravagant expectations, formed and fomented by interested parties, as to the vast field that by the independence of those colonies would be open to British commerce and enterprise." Then it continues, showing how many persons took an interest in those matters in England. He says, "Not only did

great numbers of the peninsular veterans, officers and men, go over in small bodies, and carry to the insurgents the benefit of their experience and the prestige of their fame, but a British adventurer, who assumed the title of Sir McGregor McGregor, collected a considerable expedition in the harbors of this country, with which, in British vessels and under the British flag, he took possession of Porto Bello in South America, then in the undisturbed possession of a Spanish force, a country at peace with Great Britain. This violent aggression led to strong remonstrance on the part of the Spanish government, in consequence of which the government brought in a foreign enlistment bill, which led to violent debates in both houses of Parliament." Well, then, my lords, he states, referring to debates in Parliament, and to the doctrines laid down there, of Martens, the international writer, which Lord Lansdowne had referred to: "Admitting" (he says) "that the doctrine of Martens, on which Lord Lansdowne so strongly rested, is well founded, and that it is no violation of neutrality for one belligerent to be allowed to levy men in the dominions of a neutral power, that was a very different thing from the course which was now adopted in Great Britain in regard to the South American insurgents. There was no levying of men by isolated foreign agents, as in the wars of the Duke of Alva or Gustavus Adolphus. Joint-stock companies were formed; loans to an enormous extent granted to the governments of the insurgent States at a very high rate of interest, provided for by retaining twenty or thirty per cent. of the sum subscribed; and great expeditions sent out, which at last amounted to eight thousand and ten thousand men fully armed and equipped, by the companies engaged in the undertaking, in order to secure for them the payment of their dividends."

And, my lords, the same state of things is described by Mr. Canning himself in these words, in the fourth volume of his speeches, the book which I have already referred to. First, at page 154, he says: "What would be the result if the House of Commons refused to arm government with the means of maintaining neutrality? Government would then possess no other power than that which they exerted two years ago, and exerted in vain. The House would do well to reflect seriously on this before they placed government in so helpless a situation. Did the honorable and learned gentleman really think it would be a wholesome state of things that troops for foreign service should be parading about the streets of the metropolis without any power on the part of government to interfere to prevent it? At that very moment such was the case in some parts of the empire, and he had little doubt that in a very short time the practice would be extended to London." And in the same speech, further on, he says at page 159, "Ministers did not apply to Parliament for this aid until they had tried without effect all the means which were in their power; if they were not now vested with the requisite authority, if before next summer the country should exhibit the scandalous and disgraceful scene of lawless bands of armed men raised for foreign service, parading through the streets, let not ministers be blamed; for they had warned Parliament of the danger, and had called on them to prevent it." That was the evil which was to be remedied. And, my lords, I observe that the attorney general of the day, who was Sir Samuel Shepherd, in introducing the bill into Parliament, described the evil which had to be met in this way. I refer to the fortieth volume of Hansard's Parliamentary Debates, page 364. After describing the enlistment of troops, which was to be guarded against, he says: "It was extremely important, for the preservation of neutrality, that the subjects of this country should be prevented from fitting out any equipments, not only in the ports of Great Britain and Ireland, but also in the other ports of the British dominions, to be employed in foreign service. The principle in this case was the same as in the other, because by fitting out armed vessels, or by supplying the vessels of other countries with warlike stores, as effectual assistance might be rendered to a foreign power as by enlistment in their service. In this second provision of the bill, two objects were intended to be embraced, to prevent the fitting out of armed vessels, and also to prevent the fitting out or supplying other ships with warlike stores in any of his Majesty's ports. Not that such vessels might not receive provisions in any port in the British dominions, but the object of the enactment was to prevent them from shipping warlike stores, such as guns and other things, other things obviously and manifestly intended for no other purpose than war." That was the evil which had to be guarded against—a state of things in which you had the enlistment and the parading through the country of men in military assemblage, and where you had the supplying in the ports of the neutral country of ships, not with the ordinary equipment which a ship would require as a ship alone, but with those equipments which are of a warlike character, guns and matters *ejusdem generis*, with which the ship would be more or less able to commit hostilities the moment it left the neutral country, but at all events would be enabled in a greater or less degree to commit acts of hostility.

That being the object, let me now ask your lordships' attention to the act of Parliament itself. It is printed before the American act in this volume at page 13;* and now, my lords, I will ask your lordships to allow me to go through the clauses in a somewhat general manner before I come more particularly to the construction of the clause upon which this information turns.

* See page 139 of this volume.

The preamble of the act tallies exactly with the history to which I have been referring your lordships. It recites that "the enlistment or engagement of his Majesty's subjects to serve in war in foreign service without his Majesty's license, and the fitting out and equipping and arming of vessels by his Majesty's subjects without his Majesty's license, for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom. And whereas the laws in force are not sufficiently effectual for preventing the same." After repealing the former acts, (which really do not throw any light upon the matter, for those acts merely go to enlisting in foreign service, and do not deal with ships in any way whatever,) the second section refers to natural-born subjects, but it refers to natural-born subjects either in or out of her Majesty's dominions, as one might have expected it to do.

MR. BARON BRAMWELL. You have not mentioned the title of the act, I believe.

SIR HUGH CAIRNS. I believe lawyers say that one ought not to mention the title of an act of Parliament, but I must say that I have heard doctrines upon that point with which I cannot concur.

LORD CHIEF BARON. Is not the title put in after the act has passed?

SIR HUGH CAIRNS. I have several times heard learned judges observe that the title of an act of Parliament was no part of it, because it was affixed at some subsequent period in making up the roll of Parliament. My lord, the title is put as a question from the chair the same as any other part of the act of Parliament: "That be the title of the bill," and there may be a division upon it, and an alteration in it, though in practice that does not very often occur.

LORD CHIEF BARON. I suppose the attorney general would say that the christening of the act of Parliament, the giving it its title, has no more to do with its character than whether you call a man John or Thomas at the baptismal font.

MR. ATTORNEY GENERAL. I am quite willing that the title should be referred to as part of the act, my lord.

SIR HUGH CAIRNS. It is not in this case in particular that we should wish for any favor from the Crown to allow us to refer to the title. I am referring to it as a question of law, independent of the consent of the attorney general, but I am very much obliged to him for it all the same. The title of the act is, "An act to prevent the enlisting or engagement of his Majesty's subjects to serve in foreign service, and the fitting out or equipping in his Majesty's dominions vessels for warlike purposes without his Majesty's license." I should understand by those terms, if we had no further information, that the fitting out of a vessel for warlike purposes meant the fitting out of a vessel in that distinctive manner in which a vessel which was prepared for warlike purposes would be fitted out. Then the preamble is that which I have read, namely, that the peace of the kingdom might be prejudiced, and that the laws were not sufficiently effectual for preventing the same.

Then the second section, as I said just now, deals with the case of natural-born subjects, and with that case only; but it deals with natural-born subjects both in and out of the jurisdiction of the Crown; the Crown of course having full authority over its own subjects wherever they may be found in any part of the world. And as to that, it provides that if they shall take or accept a military commission, or so on, they shall be guilty of a misdemeanor. But there is one reference, my lord, to a ship or vessel in this section which I will ask your lordships' attention to. It occurs just at the bottom of page 14,* and at the top of page 15. It is in the second member of the sentence: "If any natural-born subject of his Majesty shall, without such leave and license as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself to serve as a sailor or marine, or to be employed or engaged, or shall serve in or on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped, or intended to be used for any warlike purpose," (so far as equipped, therefore, is concerned, it is equipped "for any warlike purpose,") in the "service of, or for or under or in aid of any foreign power," &c., then that shall be a misdemeanor. Then your lordships will observe that when you come half way down page 15, another offense is created, which extends to all persons whatsoever, whether they be subjects of the Queen or not; but that, on the other hand, is an offense which must be committed within her Majesty's dominions: "If any person whatever within the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions elsewhere," and so on, "shall hire, retain, engage, or procure, or shall attempt or endeavor to hire, retain, engage, or procure, any person or persons whatever to enlist or enter" into the service, and so on. I refer to that because of an observation which I see fell from the learned attorney general in moving for the rule. He seemed to draw from the second section some argument, when he came to the seventh section, which would entitle him in some

way to say that the seventh section might be extended, as I understood his argument (I will refer to the short-hand writer's notes by and by,) even to a person out of her Majesty's dominions, doing an act within them. I conceive that the distinction here is perfectly clear. First you may get a person, under the second section amenable to our law, even out of her Majesty's dominions, but then he must be a natural-born subject of the Queen. You may get, on the other hand, a person who is not a natural-born subject of the Queen doing an act for which he would be amenable to justice, but then he must do it within her Majesty's dominions. That is the clear and ordinary distinction, and the extent and ambit of the municipal law upon all subjects.

MR. BARON BRAMWELL. Before you leave the second section, let me ask you, would the matters prohibited by the second section be illegal by international law?

MR. ATTORNEY GENERAL. Most clearly not.

SIR HUGH CAIRNS. My learned friend, the attorney general, has been good enough to answer a question which was put to me, and he has answered in a very comprehensive way, because he has affirmed authoritatively on behalf of the Crown that there is no illegality.

MR. ATTORNEY GENERAL. Oh, no.

SIR HUGH CAIRNS. Then my learned friend, the attorney general, withdraws his answer. Would those be offences against international law; that is the question which your lordship asked?

MR. BARON BRAMWELL. No; the question which I meant to ask was, whether that was prohibited by the earlier part of the act of Parliament, namely, enlisting by a British subject out of the kingdom; for instance, supposing the case of all the British subjects now in the federal States enlisting in the federal army, are they all committing misdemeanors? Is that a breach of neutrality on our part toward the confederates; or is it a violation of the confederates' belligerent rights; or is it an infringement upon our sovereignty? In fact, is that in any way prohibited by international law, which the men themselves are doing with the privity and sanction of the Americans?

SIR HUGH CAIRNS. My lord, I apprehend that the answer to that would be this: I conceive that if there be two belligerent powers, and a third power professing to remain neutral, if the natural born subjects of that power are found enlisting in numbers in the armies of one of the belligerent powers, the other belligerent might fairly make that a subject of remonstrance and complaint to the neutral power.

MR. BARON BRAMWELL. But without that, we will not assume that the facts are in any doubt; they might demand an explanation of us, and they might say, What is the meaning of this continual shipment of persons which we find going on from your ports to North America? But supposing that a war broke out and British subjects abroad enlisted in the service of one of the belligerents, being out of our jurisdiction at the time, that is prohibited by this act of Parliament, but is it prohibited by any rule of international law, so as to give any party a right of complaint against anybody else?

SIR HUGH CAIRNS. I apprehend that one gets into a certain degree of confusion by using the term prohibited by international law.

MR. BARON BRAMWELL. I am not sure that you do not; I disliked the word when I used it, but I should say, is it illegal by international law in any sense.

SIR HUGH CAIRNS. If your lordship asks me this, Is it contrary to those duties, the fulfilment of which under the principles of international law a belligerent may require from a neutral? I should say it was. I should say that the belligerent might justly complain of it to the neutral.

LORD CHIEF BARON. Would it be so before any proclamation by the sovereign of the neutral state to prevent his subjects doing it?

SIR HUGH CAIRNS. No, my lord; when I used the term neutral state, I mean a state which has announced itself to be neutral in the contest.

LORD CHIEF BARON. But without any proclamation to its subjects to abstain from taking part in the contest.

SIR HUGH CAIRNS. No. I assume that the neutral state has announced in proper form its intention to remain neutral in the contest.

LORD CHIEF BARON. That is not involved in Mr. Baron Bramwell's question.

SIR HUGH CAIRNS. Then I should ask his lordship, whether he desired to include or exclude the consent of the neutral. I meant to include it.

MR. BARON BRAMWELL. I will suppose the proclamation to be issued or not issued—that this country has done its best to prohibit the enlistment of its subjects in the armies of one of the belligerents, but nevertheless they will enlist—does that give us a right of complaint against the state in whose pay they enlist, and does it give the opposite belligerent any right of complaint against us.

SIR HUGH CAIRNS. It gives us no right of complaint against the belligerent; but I humbly conceive that, as a matter of remonstrance between one state and another, between a belligerent state and a state professing itself to be neutral, the belligerent may come to the neutral and say, You profess to be neutral in this contest, but your subjects are enlisting in numbers in the armies arrayed against us. We complain of that; we ask you to restrain it; and we put it to you as part of your duty under international law to restrain it.

Mr. BARON BRAMWELL. The reason I put the question to you is this: If this would not be contrary to any international law, then this foreign enlistment act goes beyond international law, the scope of your general argument which is, I think, a very excellent, one being that this municipal law is made for the purpose of enabling the municipal authorities of this country to enforce international law with more effect against its subjects. I think that is a very excellent argument.

Mr. BARON PIGOTT. There is no doubt that international law was part of the common law before the enlistment act, but I think it was extremely doubtful whether you could indict a man for a breach of that common law.

SIR HUGH CAIRNS. Though we are in the habit of saying that international law is part of the common law of the kingdom, that is one of the expressions which require a great deal of explanation. It is perfectly vain to say that for a matter which may be made the subject of remonstrance between government and government under international law, there could be on the part of our government an indictment against its own subjects; that may or may not be.

LORD CHIEF BARON. The common law of this country knows nothing whatever of a crime committed out of the jurisdiction of this country; and except by statute there is no mode of trying even for a murder committed abroad.

SIR HUGH CAIRNS. Just so, my lord.

Mr. BARON CHANNELL. The question which my brother Bramwell put was, whether you contend that the foreign enlistment act does not make any act an offense which was not an offense according to the law of nations, but only gives a different power of dealing with the offense.

SIR HUGH CAIRNS. I am sorry to have to define from time to time the terms used, but it is very necessary in an argument of this kind. Your lordship does not misunderstand my argument, I am sure, when you say that I am contending that anything which was an offense under international law was an offense against the law of this country. An offense by international law is hardly a proper term; but no doubt it may be used with proper understanding.

Mr. BARON CHANNELL. I think I have not made myself understood. You have been arguing that the government of the United States promulgated certain rules, and that they were rules deducible from international law; and you cited Kent for the purpose of showing that they were against international law; and it may be that though it was an offense against international law, the offense was not prohibited by a penalty, or that there was an insufficient mode of dealing with the offense. I was afraid I might have misunderstood you, and I only put the question for my own satisfaction and information, to know whether you did propose to contend that, apart from any additional remedy (that is to say, with regard to the mode of procedure) the foreign enlistment act only made that an offense which was contrary to international law.

SIR HUGH CAIRNS. Your lordship is well aware that of course there is no privity, to use a legal term, between the subjects of this kingdom and a foreign power. A foreign power has no jurisdiction over the subjects of this kingdom. The foreign power must deal with our government, and on the other hand, our government must deal with its own subjects. Now, there are a great number of matters which are, or may become, the subject of remonstrance as between a foreign government and our government, and which, if the remonstrance be not attended to, may become or may be made a *casus belli*; but it is a wholly different question, whether because those things with respect to which there is this complaint by the foreign government against our government are done by our subjects, therefore our government should come to its subjects and say, Now we agree to the justice of the remonstrances made to us, and we will indict you because you are the persons who have given rise to the remonstrances made against us as a government. But the two things are by no means correlative; and, my lord, I understand that to be the announcement made in the preamble of this act, or that is what the act says. The act says, there are an immense number of things as to which we are bound in justice to say that they are grounds of complaint against us or may be grounds of complaint against us on the part of foreign nations. At present we are powerless; the complaint is not against us as a government; we as a government have done nothing; the complaint is against acts done by our subjects; but when we turn to restrain our subjects we find that we have not power to do it, whether it be from defects in procedure or from difficulty in interfering by our common law with the offense for which a man is to be indicted by the law of the land; but we cannot do it practically. Therefore what we desire Parliament to do is this, look at what we are bound upon a legitimate and proper complaint by a foreign power to perform, and then turn and see what we require. We require more ample authority to restrain those acts so far as they are committed by our subjects. That I apprehend to be the scope of the preamble and the scope of the legislation upon the subject.

LORD CHIEF BARON. There are certain cases in which it is said, for instance, that the international law is part of the law of England. It is constantly laid down that the law of nations is part of the law of England; and so it is said, and most properly, that the Christian religion is part of the law of England, and that the moral law is

part of the law of England; but in certain cases the law can give no assistance. In some cases there can be no doubt that all that the law can do is to say, We will give you no assistance; and it can do no more. A breach of the moral law, if it forms part of any contract, or gives rise to any consideration, is a case where the common law assists the moral law by saying, We will not enforce any contract or any apparent obligation that involves a breach of the moral law; but we can do no more. The law does not punish by indictment an infraction of the moral law, if there be no provision by statute or no other means of putting the offense in the shape of an indictment; all that the law does in the way of assistance is to say, We will not help you. And so I apprehend with respect to international law, if anything be done or agreed to be done which is a violation of the law of nations by any part of a contract or compact between two individuals the law says, We will not help you—the contract is void. And I believe it will turn out that there are many cases where all that the common law can do is to say, You must trust to yourselves and the honor of those with whom you deal, if honor has anything to do with such a transaction; the law will give you no assistance. The moment it turns out that any arrangement or contract involves a breach of the law of nations the common law will give no help.

SIR HUGH CAIRNS. With regard to what your lordship has just now stated, if I may say so, an eminent illustration will be found in a case which I am sure is in your lordships' minds, which occurred a considerable time ago in the court of common pleas, before Lord Wynford. In the court of common pleas it appeared upon a common money action that a contract had been made in a manner which involved the collection of money for the purpose of making a loan to one of two belligerents, and Lord Wynford held, and the court of common pleas also, that that vitiated the transaction because the foreign nation might complain to our government on the principles of international law. This was the case of subjects of this country aiding and abetting one of two belligerent powers. But I should be surprised indeed if I heard any one gravely contend that an indictment would lie against a person in this country for lending and advancing a sum of money to a foreign state because that state happened to be at war with another, and because there would be almost a moral certainty that that sum would be used in the prosecution of the war.

LORD CHIEF BARON. Or selling them guns?

SIR HUGH CAIRNS. Yes, that would come under considerations very much the same. But I was about to say that it is very curious that in the United States they had to consider a question which, if not the same, seems to me to come very close to a question put to me by Mr. Baron Bramwell, in the case of a citizen of the United States, Gideon Henfield, in the time of M. Genet. The United States took this course. There was one of Monsieur Genet's privateers, on board which a citizen of the United States enlisted before the act of Congress was passed. He enlisted on board this privateer, and was serving on board the privateer, and he was indicted for a misdemeanor. As I understand the question which Mr. Baron Bramwell put, it is, Could he be so indicted? I apprehend not.

MR. BARON BRAMWELL. I am sorry I did not make myself understood. The question which I really meant to put to you is this, Is there not something made an offense by the second section of this foreign enlistment act which is in no way contrary to any international law or contrary to the spirit of it.

SIR HUGH CAIRNS. I will take it by steps.

MR. BARON BRAMWELL. I do not say that a man could be indicted for a violation of international law. I may take the case which you put this minute, of money lent, which is considered contrary to the spirit of international law, but not contrary to the policy of our law. But I should have thought that the enlistment of our own subjects, living in a foreign state, in the armies of that state, was absolutely lawful in every sense.

SIR HUGH CAIRNS. Your lordship puts the case of enlistment only. The words are, "to serve in any warlike or military operation, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, province, colony, or any part of any province or people, either as an officer or soldier, or in any other military capacity." Then, if your lordship will allow me to take the section by steps, I shall deal with each. It is quite clear that there is pointed out a state of things altogether different from the case of two belligerents, and this country remaining neutral. There is struck at there a matter of a different class and character. I understand that what that points out is this, that just as by that sort of, I should perhaps call it something more than etiquette, which forbids any person in the service of her Majesty to accept any honor or any decoration from a foreign prince or a foreign potentate without leave, so this seems to me here to be a provision which declares that no natural-born subject of her Majesty shall without leave take service, that is to say, enlist himself in the service of a foreign prince to serve in war. That is for a reason which is very obvious, I think, and altogether different from those reasons which apply as between two belligerents, that is

not in the interests of international law at all; that is to prevent a subject of the Queen taking upon himself a kind of allegiance, which entering into military service would be—taking upon himself a sacramentum which may in the course of time prove to militate against and be inconsistent with the allegiance which he owes to his own sovereign. That is clearly pointed at there. I do not mean to say that that has anything to say to international law, or that it has anything to say to municipal law—I mean the municipal law anterior to this act of Parliament. I do not suppose that it would be contended that it could be made the subject of an indictment at common law irrespective of legislation. Whether that was included in one of those various acts that were repealed and it was thought desirable to re-enact *pro tanto* the act which so included it, I cannot answer. It may very well be that it was one of the things included in one of the repealed statutes, and as they were repealed as a whole, it may have been thought desirable to re-enact it here; but that does not seem to me to bear upon the question of international law at all.

Now, my lord, the next part of the section is this: "If any natural-born subject of his Majesty shall, without such leave or license as aforesaid, accept or agree to take or accept any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself to serve as a sailor or marine, or be employed or engaged, or shall serve in or on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped, or intended to be used for any warlike purpose in the service of, or for, or under, or in aid of any foreign power, prince," &c., "or if any natural-born subject of his Majesty shall, without such leave and license as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province or part of any province, or to a place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve, in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country," and so on, "either as an officer or a soldier, or in any other military capacity," &c., "although no enlisting money or pay or reward shall have been or shall be in any of the cases aforesaid actually paid to or received by him or by any person to or for his use or benefit." There, again, your lordships observe that what is pointed at here, and struck at here, is something altogether disconnected with any carrying on of a war by one belligerent against another. It is the simple taking of service under a foreign power; and the Crown thinks it fit to ask Parliament to give it the power to restrain its own subjects from enlisting in foreign services without leave. There is nothing more in it than that. There is no question whatever of its being contrary to international law.

Then, my lords, the next part of the section is: "If any person whatever within the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions elsewhere," &c., "shall hire, retain, engage, or procure, or shall attempt or endeavor to hire, retain, engage, or procure any person or persons whatever to enlist or to enter or engage to enlist or to serve, or to be employed in any such service or employment as aforesaid as an officer," &c., "for, or under, or in aid of any foreign prince," &c., "whether any enlisting money be received or not, in any of these cases the person shall be guilty of a misdemeanor." Therefore after going through the whole of the section, we find that the motive with which service was to be taken in the foreign army is immaterial. It may not be to serve in war at all necessarily; it may be to be a part of the standing army of the state; but whether or not, the legislature insists that that shall not be done without the leave of the Crown given for that purpose. Therefore we may remove (and this, I think, will answer the question which Mr. Baron Bramwell was good enough to call my attention to) the second section altogether from the argument which I took leave to submit to you, the argument which suggested that the measure of international duty was the measure and the extent of municipal provision in the sections of this act as to ships. That may not apply to section 2, because that section does not deal directly with the question of international duty, but it deals with the question of allegiance between the Crown and its own subjects.

Then the third section is by way of exception from the second, and may be passed over. The fourth is as to the issuing of warrants and the trial. The fifth is as to vessels with persons on board engaged in foreign service being detained at any port: that is in aid of the second, the third and the fourth sections, and so is the sixth; and there ends the series of provisions, which are very much broader and wider than any question of aiding one belligerent against another. Those are questions of taking service without the leave of the Queen in any service which would militate against the allegiance which the subject owes the Queen. The seventh section is the one which I say is the expression of international law upon the subject, and is to be construed, as I apprehend, with that light thrown upon it.

The first observation which I shall take leave to make upon that seventh section is to remind your lordships of what I have already said. I am sure that it has not passed

from your lordships' mind that the circumstance that the whole is prefaced by these words, "without the leave and license of her Majesty," shows that there is nothing in this which can be said *a priori* to involve any offense in the nature of *malum in se*, or an offense as regards the existence of which you can have any preconceived or any preformed opinion. A very strong instance of that kind has occurred in our own recollection—I believe in the present year. I refer of course to the case of China, where, in a war in which the government of China are belligerents against a certain portion of the empire of China who are in revolution, we have seen from our own shores an expedition go out, fitted out in the most formal way as ships of war, commanded by officers, some of whom were in her Majesty's service: but the whole was done by the leave of the Crown, given by order in council for the purpose. It is therefore one of those things in which the Crown may throw open the whole of that, whatever it may be, which is covered by the seventh section, if it so thinks fit. There is therefore no moral offense—no *malum in se*—which is struck at by the section.

The next point which I ask your lordships to consider is this. My object of course is to determine what is the principle of the entire offense which is defined by this section. We must go by steps in order to ascertain the answer to that question, and the first thing I ask your lordships to consider is this—Is it by this section made an offense to build—is there a prohibition against building a ship? Of course by the term building I mean as distinguished from equipping, fitting out, furnishing, or arming. I take the case in which I have to deal with mere structure as distinguished from those things which, as we all know, are superadded after the hull of the ship is completely built and is finished as a ship, or, as it is sometimes described, as the complete hull of a vessel. Now, my lord, in the first place I say that the most cursory inspection of the words I think would lead us to conclude that there is assumed throughout this section from beginning to end, that before you come to ascertain whether the offense is or is not committed there is a ship or vessel in existence. There is a ship or vessel spoken of, which is to be "equipped, furnished, fitted out, or armed." The ordinary and natural construction of those terms would be that the ship was in existence as a ship, and that something was to be superadded to the ship, which has occurred here, whatever it may be, equipping, fitting out, or arming.

MR. BARON BRAMWELL. The mere sale is not prohibited.

SIR HUGH CAIRNS. I am avoiding for this moment what is to be the line of demarcation, which I will deal with by and by; but I am now inquiring what is the meaning of the phrase "equipping, fitting out," &c. At present, all I say is —

LORD CHIEF BARON. Some meaning must be given to the clause consistent with the right to build.

SIR HUGH CAIRNS. That is all I desire at present.

LORD CHIEF BARON. Had it been intended that the ship should not be built, nothing would have been more easy than to say so.

SIR HUGH CAIRNS. Just so. I was going to add that in addition to its being the natural construction, the section speaks of the vessel, and speaks of the fitting out of the ship or vessel, as a pre-existing thing; and the observation which your lordship has made seems to me conclusive, that if it was intended to have said you shall not build a ship, nothing would have been simpler than to have said so in such a way as that there could be no misapprehension about it. But the forfeiture clause makes it still more clear. The act says, "And every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel shall be forfeited;" and still further, toward the end of the clause, it says, "And that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the excise laws." Therefore, your lordships observe, that when you come to the end there is a distinction made between the two things spoken of, namely, the ship or the vessel itself, and the furniture, the equipment, the stores, the ammunition, and everything else that may be connected with the vessel.

In addition to that, in the part of the section which speaks of the issuing or delivering of a commission, these words occur, "for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid;" again speaking of the existence of the ship or vessel as a thing independent of any equipment or outfit which may be placed upon it. I may say, my lords, as to that, that if the argument is maintained on the other side, (I do not know, of course, whether it will be maintained or not, for we have not had an opportunity of hearing the arguments of the Crown,) which I have seen maintained out of doors, namely, that the moment you find any part of the structure of a vessel to be a part which is suitable for a vessel of war, and not for a vessel of commerce, that ship is struck at and comes within the ambit of this act of Parliament; if that argument is maintained, it must go to this length; and if it were the case, as very probably it is, that in laying down the keel of a ship, the keel may be laid down

of a kind more or less fitted for a ship of war, according as you do or do not intend to employ the vessel as a ship of war, if the keel be laid down with the intent that she shall be used as a ship of war, then that is an offense committed within the act; it is a misdemeanor, and there is a forfeiture, not of the ship, for there is no ship to be forfeited, but a forfeiture of the keel so laid down. That would be absurd. I really do not know that the argument requires any graver consideration; it would be absurd to say, that where the act speaks of a ship or vessel being forfeited with her equipments, that is satisfied and met by the mere laying down of the keel, which in no sense can be called a ship, much less any part of the equipment of a ship.

If I carry your lordships with me in that observation, and if you ultimately are of opinion, as I think you will be, that it is impossible to contend that building, as distinguished from equipment and furniture, is struck at here, you will observe that there are other matters connected with ships, which are not in any way mentioned or restrained; for example, there is nothing here which restrains the hiring of a ship, or the hiring of room in a ship, for the purpose of carrying out warlike stores, to be delivered either to the ship abroad, or to a port abroad; there is not a word which would indicate that that was to be an offense in any shape or form. Again, there is nothing here which indicates that the building and fitting out of a class of ships which are well known in war, and which are called dispatch boats, is intended to be restrained or struck at by the section. Yet the great importance of vessels of that kind is perfectly well known. I think it is said that Lord Nelson said at various times, that the whole of his expedition was paralyzed from the want of those dispatch boats. Indeed, of course one knows, without any explanation, that those boats must be of the greatest importance to any warlike expedition. Yet there is nothing here in this act to restrain the fitting out and equipment of a ship of that kind.

Now I am anxious to ask your lordships to go a little further in the consideration of the case of a ship built merely, as distinguished from being fitted out or equipped—and upon this point a question was put to my learned friend in moving for the rule, which he answered in the way I will state to your lordships. The Lord Chief Baron put this question to my learned friend the attorney general: "Suppose the case of the building of a mere hull, with the intention that it should be towed away across the Atlantic by a tug, and suppose there was some confederate port open, which there is not, that hull being incapable in that state of being used for any purpose, whether of merchandise or war, do you mean to say that that would be illegal?" The attorney general says, "That would raise an entirely different question. The LORD CHIEF BARON. Would it be illegal? MR. ATTORNEY GENERAL. I will assume for a moment that it is not illegal. LORD CHIEF BARON. I am bound to say that if it were illegal, you would be entitled to your rule at once, because no doubt I meant to lay down distinctly that the mere hull of a vessel in no condition fit for any use whatever, might be made and sold at Liverpool to anybody. MR. ATTORNEY GENERAL. My case does not in the least require that I should argue that the case imagined by your lordship, which is obviously not one which is very probable and practical, would be brought within the words 'equip, furnish, fit out, or arm.'" I do not know whether my learned friend meant to say, that he conceded the question that was put by your lordship, or whether he merely intended to say, that for argument sake, and for the time only, without committing himself to any proposition which was to last throughout the case, he would take it so.

MR. ATTORNEY GENERAL. I only said that it was not the case before the court.

SIR HUGH CAIRNS. Exactly; but I beg leave to think, my lords, with great submission to my learned friend, that when the Crown comes here to ask the court to put a construction upon an act of Parliament, which shall be a rule for the subjects of the Crown to follow, the Crown is bound to deal with a question of that kind, not by saying it is not the case before the court, or it is a case which I will admit for a few moments; but the Crown is bound to come forward with a theory and with some view upon a subject of this kind, in the understanding of which by those concerned there can be no difficulty. But I beg leave to submit with perfect confidence that it will be your ultimate view of it; that as there is, nothing in the section to forbid the building of the hull of a ship as distinguished from the outfit of it, so there is nothing whatever which forbids the taking the hull so built into the possession of a tow-boat, and towing it like any other article of merchandise, (contraband, if you like, still an article which may legitimately be passed over or sold,) and carrying it out of the jurisdiction of the neutral country into a confederate port, or to any other place to which it may be thought desirable to take it.

And, my lords, I cannot help remarking here upon the observation of my learned friend the attorney general, who says that this is not a very probable and practical supposition. Let us not talk here about this act of Parliament as if it were an act drawn up and framed with reference to the United States, or the confederate power; neither of them were thought of at the time when it was framed. I agree, my lords, that it is not a very practical supposition that a large ship of war can be towed across the Atlantic by a tug-boat, but I will suppose cases as to the practicability of which

there can be no doubt. Let us suppose that France and Russia were at war, and we neutral, am I to be told that the supposition which I am going to make is not a practical one? I suppose that it suits France in that war, either in consequence of her own ports being full, or for some other cause, to have a ship built in England. She sends over orders to a ship-builder at Southampton or Portsmouth to build a vessel suitable for a warlike purpose. He builds and completes the hull in every way, but he does not fit out, equip, or arm it. The hull so completed is taken possession of by a tow-boat. What is there impracticable in the idea of a tow-boat towing over that hull to Brest? It might be done perfectly well. Of course it is liable to capture by the other belligerent on the way. Of course when the hull goes to Brest the guns for that hull, the rigging, the sails, and anything else which the ship may require to make it a complete ship, may be shipped at the port of Southampton, at the port of Portsmouth, at the port of London, at the port of Liverpool, or anywhere else you please, and may be sent, as contraband of war may be sent, out of the port, and may be carried across to a French port, and any use that may be thought proper may be made of them there, whether to put upon the hull or not, as may be thought desirable.

Then, my lord, if that be so I go a step further, and I ask your lordships if it be the case that a hull completed and built, we will say in Southampton, or Portsmouth, may be taken possession of by a tow-boat and towed across the Channel into a port of France, (the case which I have supposed,) is it to be said that it is not competent to put upon that ship those appurtenances which will enable it, without the assistance of a tow-boat, to navigate that Channel—in other words to put sails on it, if that is desirable, or to put a steam-engine and boilers, if that is the mode of propulsion which is to be adopted, into the ship? Is it equipping it, or furnishing it, or fitting it out as a ship of war to take that course? I say it is not. I say it is not any more a ship of war when that is done than it was before. I say it is not a ship of war before that is done—it is not within the act before that is done, and the alteration which is produced by giving it the means of propulsion simply, does not make it any more fitted out as a ship of war than it was before.

Then, my lords, another observation occurs to me, which is this. If building is not struck at by this act of Parliament, it follows upon every sound principle of reasoning, that when you come to deal with words, such as “equipping, furnishing, fitting out, or arming,” you must take them to be words *diversi generis*, as meaning something of a different kind, something not *ejusdem generis* with building. You cannot upon any sound principle of reasoning assign so capricious and so unmeaning an object to an act of Parliament as to conceive that it does not strike at the building of the hull of a ship, but that it does strike at something, which is just of the same kind and character and nature as the mere building of the hull, and which is not connected in any way with hostile or warlike ship-building. But if you adopt the argument that those words “equip, furnish, fit out, and arm,” are all *ejusdem generis* among themselves, so that the character of the last will give a complexion to the whole of the four, then you at once get an intelligible object, and an intelligible meaning on the part of the legislature, namely, that it did not mean to prohibit mere building, that it did not mean to prohibit anything which was of the character of building, and as harmless as building is allowed to be, but that it did strike at something of a wholly different character, something that would turn the ship into a ship of a distinctively warlike character, and give it those attributes and powers which a ship fitted out for war would have.

Now, my lords, I am still not approaching the words “attempt or endeavor,” or “procure,” or “be concerned in,” but I am still endeavoring to find out what is the complete offense, if I may use the expression, which is struck at by this section; and as the result of my arguments as I have put them before your lordships, abandoning for a moment the verbiage of the act of Parliament, which really cumbers us, and abandoning also for a moment any question of attempt or endeavor, and pointing merely to the principal offense itself, I submit that the construction of the section, putting it in very short terms, is this—it is a prohibition to this effect: no person within her Majesty's dominions shall equip a ship as a ship of war with a view to its being used by one belligerent against another. The ingredients in the offense therefore are threefold: first it must be committed within her Majesty's dominions, second there must be an equipment as a ship of war, by which I understand an equipment of a warlike character.

Mr. BARON BRAMWELL. Something short of arming.

SIR HUGH CAIRNS. We say nothing of arming. I say an equipment of a warlike character; it may be short of arming. I do not even ask your lordships to hold that it must be a complete equipment; that would lead your lordships very likely into questions which it would be impossible to solve; for example, it might be impossible to say when a ship was, more or less, completely equipped. What I say is this, the equipment which is to be complained of must be an equipment of a warlike character, otherwise you are not equipping the ship as a ship of war. The third ingredient is, the view or the intention that the ship should be used by one belligerent against the other.

Mr. BARON BRAMWELL. The act goes further than that; the words are, "cruise or commit hostilities."

SIR HUGH CAIRNS. I said "use," my lord, because there is no controversy about that part of it. I said "use" as a compendious term, to denote the kind of use referred to in the section.

Mr. BARON BRAMWELL. Without wishing to help you, for of course you do not stand in need of it, I may remark, that it seems important to bear in mind when you use the expression "equipment," that it must be warlike equipment. It must be such equipment, one would think, that the vessel can cruise or commit hostilities.

SIR HUGH CAIRNS. Certainly, my lord, I meant to refer to those words "cruise and commit hostilities," as part of the words which give me a right to say that the equipments must be of a warlike character, because without those words I admit that other questions might be opened. And I also put out of view the case of a transport, because it is admitted that that point is struck out of any accusation against the ship with which we have to deal. But it will not interfere with my argument that the word a "transport" occurs in the act, because, just as a ship of war must have the equipments which are distinctive of and peculiar to a ship of war, so a transport must have the equipments which are distinctive of and peculiar to a transport. But with regard to the words which Mr. Baron Bramwell has referred to, namely, "to cruise or commit hostilities," those words I rest upon as words entitling me to say that the ship pointed at in that alternative part of the sentence must be equipped as a ship of war.

Your lordships will observe that I am carefully avoiding putting the case as high perhaps as it might be put in argument, because I do not feel it necessary that I should do so. I might go as far as to distinguish and describe the equipment in another manner. I might say, it must be an equipment which will enable the ship to cruise and commit hostilities—that is going further—then warlike equipment alone would not be sufficient. I might go so far as to say, that the test to be applied to the equipment should be this—that it must be an equipment which would enable the ships to cruise and commit hostilities; but it is not necessary to my argument to do so. I show, at all events, that it must be an equipment of a warlike character.

Now I ask your lordships to observe how completely that description tallies, first with the history we have of the question, then with the American act of Congress, and then with other parts of this same statute. How does it tally with the history of the question? I showed you that before any municipal act had been passed either by America or by this country, proceeding upon principles of international law alone, this was the test applied by the government of the United States to the equipment of ships in their ports, which were lawful and those which were unlawful; those of a warlike character were declared to be unlawful, and those not necessarily and distinctively of a warlike character were declared to be lawful. How does it tally with the American act? I pointed that out to you when I showed you that although the American act gives power to certain officers to require a bond, or to detain a vessel upon suspicion, yet that power does not arise unless the person requiring the bond or detaining the vessel is able to predicate of the vessel, that she is an armed ship, or that she is a ship whose equipments are of a warlike character. How does it tally with the eighth section of the present act of Parliament? That eighth section is a very remarkable section, it is the section which deals with the question of what is called in the marginal note "Penalty for aiding the warlike equipment of vessels of foreign states," &c. That eighth section says this: "And be it further enacted, that if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions beyond the seas, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war or cruiser, or other armed vessel which at the time of her arrival in any part of the United Kingdom or any of his Majesty's dominions was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people, belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor."

Now, my lords, observe there the case that is supposed by that section; you have there a case as you had in the American act, of a ship coming into a neutral port clearly being a ship intending warlike operations; there is no question about that, and no dispute about it. It is deprived of all possibility of equipment? Not at all, the penalty is only then against the addition of any equipment for war, so as to augment the warlike force of the ship or vessel. Any equipment which is not an equipment for purposes of war, any equipment which is not to augment the warlike force of the vessel, is per-

fectly lawful. Yet the argument which I suppose will be urged by the Crown that the equipment by section 7 may be an equipment which is not warlike, will land us in this absurdity, that in the seventh section you have a clause dealing with equipments generally, whether warlike or not, but in the eighth section, where, beyond all doubt, the ship referred to was exactly one of the very class which would be prepared to cruise and commit hostilities, you allow the ship to take in her equipment at a neutral port, provided the equipment be not of a warlike character.

My lords, if I am right in saying that that is the principle offense consisting of these three parts, an offense committed in her Majesty's dominions, the equipment being of a warlike character, or such as would enable a ship to cruise and commit hostilities, and the intent or object being that that ship should be used by one belligerent against another, let me now deal with the minor words, "attempt or endeavor" or "procure" or "be concerned in." Now, my lords, I have a complaint to make here of the proceedings on the part of the Crown, which I think your lordships will consider not without foundation. I certainly was very much astonished at hearing, or rather at observing in the notes, an observation of my learned friend the attorney general in moving for this rule. One of the complaints of the Crown was that the learned lord chief baron on the trial had not called the attention of the jury to that part of the act of Parliament and the arguments founded upon it as to procuring and being concerned in, the equipment and so on, and I observe among the grounds upon which the rule was sought, this matter prominently put forward as among the heads of complaint upon which the rule is obtained.

Now, my lords, I endeavored to refresh the recollection, which was very strong in my own mind, of the course which was taken by the late attorney general at the trial, a course which was not misunderstood then, but was accepted by the other side as a convenient, and indeed, under the circumstances of the case, the necessary course, and which I will contrast with the complaint that is now made by my learned friend the present attorney general. What did the late attorney general say in his opening? Your lordships will find it in the book before you at page 12*. It is the second break in the page. The learned attorney general speaking of the information says, "The information, as my lord knows by this time, is a very voluminous document. In truth, neither you, gentlemen, nor any one else, unless my learned friends on the other side think proper to embark in the affair, no one need trouble themselves about the lengthy information, or the multitude of counts contained in the document. The number of counts, as my lord will understand, is rendered necessary, or prudent at all events, by the very numerous words of description of the violation of the statute which occur in the section on which it is rested. You will find that a person shall forfeit his ship, who without license of the sovereign shall equip, furnish, fit out, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel with a certain intent; therefore, as a matter of prudence, (and I will pass from this part of the case in a moment,) it became right with us to put what I may call the complaint or accusation in various forms, so as to bring the case, supposing the facts proved to your satisfaction, clearly within the language and terms of one part of this section or another. Therefore we shall have no complaint about the length of the information. The truth is, as my lord will observe, the first eight counts are those only to which any attention need to be paid. They merely vary one from the other, and the others are changes rung upon those by reason of the various expressions I have read."

MR. ATTORNEY GENERAL. Will you have the goodness to read what is at the bottom of that page?

SIR HUGH CAIRNS. If my learned friend wishes it I will read it at any length; at the same time I take the liberty to say that nothing which comes afterward could qualify that statement made by the attorney general that those eight counts were those to which only any attention need be paid. Now I will read what is at the bottom of the page: "Now, that information being filed, the complainants, who have been permitted, as I told you, to appear, deny the existence of those various causes upon which the Crown relies as having induced the forfeiture, and your duty to-day is to try, whether in substance and in fact, these causes or any of them, any material causes within the section to which I have referred, did exist at the time of the seizure, and warranted the seizure that took place. Gentlemen, the charge, as you may infer from the reference I have just made to the language of the seventh section, is in fact this—that the *Alexandra* was fitted out, or if the term be preferred, equipped, or was permitted to be equipped, or that persons endeavored to equip; they are the various forms, but I rather prefer to rest on the main expression, that it was fitted out and equipped, or that endeavors were made to equip, with intent to be employed to harass and to be hostile to the government and citizens of a state with which her Majesty was not at war, the state of the United States."

Now, my lord, I repeat that observation; I do not mean to say that the learned attor-

* See page 7.

ney general in form abandoned the other counts of the information, but I say that he clearly and distinctly announced to the learned judge presiding at the trial of the case, and to the counsel on the other side, this: My idea of that which in substance we have to try is, that you will find it in those eight counts. No doubt I shall have the liberty if I see clearly and distinctly, if I am ousted from those eight counts, that I can bring the case hereafter under another one, to try to do so, and I shall claim that liberty; but I tell my lord, and I tell the opposing counsel, that until I warn you to the contrary, what we have to direct our attention to is that part of the information, namely, the eight counts. Those eight counts are upon the "equipping" and "furnishing," and "fitting out," and not upon the "attempting," or "endeavoring," or "procuring," or "being concerned in." As your lordships cast your eyes over the different counts, you will see the difference which there is in them. The first count says "did equip," the second count also "did equip," with a certain other intent; the third says "did equip," again; the fourth says "did equip," the fifth "did equip," the sixth "did equip," the seventh "did equip," the eighth "did equip." And then we have a *résumé* at page 5* of the other counts; the ninth to the sixteenth substituting "did furnish" for "did equip," the seventeenth to the twenty-fourth substituting "did fit out" for "did equip," and so on.

Then, my lords, I will show your lordships how this view was accepted by the other side in a moment. But at a later period and before the case of the defendants was opened at all, my lord chief baron again asks the attorney general, at page 68† in the large book, "How many counts are there?" "MR. ATTORNEY GENERAL. There are ninety-eight counts; but the first eight counts disclose the whole of the pleadings; the other counts vary only in taking the words of the statute, such as 'equipping,' 'fitting out' and 'endeavoring to fit out,' and the like. The first eight counts are the only counts that any one need pay the least attention to upon this point, and the first count raises this question as to the names." Was that misunderstood on the other side? When the case of the defendants began to be opened, this is the statement which, as counsel on behalf of the defendants, I made in answer to the proposition or statement of the learned attorney general. Your lordships will find it at page 139‡ of the same book, just at the bottom of the page. The attorney general says, "We will not stand on any count which describes the intention to have been that this should be used as a transport or store-ship. We have not so opened our case." To which I said, "I did not suppose that my learned friend so considered it; only, in order to prevent misconception hereafter, I mention it now. I come now to the main counts in the case, which my learned friend said very fairly might be judged by the first eight counts of the information, the others repeating the same idea in different forms of words."

Now do not let it be supposed for a moment that I mean to say the attorney general abandoned or could not have relied upon, if necessary, the other counts of the information; but I say, if, after that, a complaint is made of the ruling of the learned judge who presided at the trial, and it is meant now to be urged in opposition to anything which was argued at the trial—We have not got a case; we admit we have a difficulty in supporting a case with regard to equipping; but we ask you to look particularly at a wholly different offense, at an offense described in a wholly different way, viz., the being concerned in the equipping, and to hold that our evidence goes to that; then I say it was the bounden duty of the attorney general to say, if he had so intended—but he never intended anything of the kind: "Do not let my lord be misled—or the counsel on the other side, or any one—be misled by supposing that any one of the eight counts represents clearly what was the *gravamen* of my charge; for it is to be found in a different count. I ask your lordship's attention to that, and I call upon the other side to meet that case in point of argument." Nothing of the kind, however, was said. The matter was left in the way I have stated, and in no other way.

MR. ATTORNEY GENERAL. I should be very sorry, without sufficient cause, to interrupt my learned friend. But not only are the interests of truth and justice at stake, but also the reputation of my learned friend the late attorney general is concerned in what has just been said. If you will look at the 199th page,§ you will see what the attorney general said in his reply. It is this: My lord, there are other material words to which I will call your lordship's attention. It is not only a violation of this section that a person shall equip, or fit out, or arm, or furnish; but if he shall attempt or endeavor to do so, or shall procure the thing to be done, or shall knowingly assist or be concerned in aiding with the intent. Therefore any one of those, or the endeavor, or being concerned in the attempt to do any one of those, as I submit to your lordship clearly on the terms of this section, would bring the case within its operation. That would be a matter for your lordship's direction to the jury."

SIR HUGH CAIRNS. I am much obliged to my learned friend for any interruption which enables me to have what I should not otherwise have, viz., some power of answering the statements of my friend. And first I take leave to say that the reputation of the late attorney general is not involved in this question. His reputation desires and requires no argument from either me or my learned friend. He, I have no doubt, were

* See page 133.

† See page 39.

‡ See page 79.

§ See page 111.

he here, would deal with this case as I desire it to be dealt with. I say it was impossible for the late attorney general, after opening his case as I say it was opened, after calling upon us to meet the case as it was opened, after I was heard on the part of the defendants, and after our mouths were closed, to put the matter in a new condition by his reply. And even if those ambiguous words fell from the attorney general which my learned friend has just read, I care not for them. I say the matter was clearly put between us in his opening and in my observations for the defense; and I say it was not consistent with the course the Crown ought to take to attempt to open a new case in the reply on the part of the Crown. But, my lords, the late attorney general was perfectly well aware, and we shall find that he could not be otherwise than well aware, that it was as it appeared to him to be at the first, utterly immaterial to rest upon these other words, and I say now that if the case had been opened in any way—if these words had been made distinctly at first the *gravamen* of the charge, it would not have bettered the matter in the least, as I hope shortly to be able to convince your lordships.

Now I will deal with these minor words. What are they? They are, in the first place, to “attempt or endeavor to equip;” secondly, “procure to be equipped;” and thirdly, “knowingly aid, or assist, or be concerned in equipping.” Now, at this branch of the argument, I am entitled to assume, that the view I have submitted of the principal offense is the correct one, otherwise, of course, it would not be necessary to go into the minor ones; but I will assume now, that the principal offense is an offense so constituted, that is, an equipping within her Majesty’s dominions, in a distinctively warlike manner, a ship to be used by one belligerent to cruise and commit hostilities against the other. Now let me take, first, “an attempt or endeavor” to do that. What does that mean? Does it mean an attempt or endeavor to do that out of the jurisdiction. It must, of course, be an attempt or endeavor to do the act, which if it had gone on to its consummation, would be the offense described in the earlier words of the section. If the offense described in the earlier words of the section be to equip in a distinctively warlike manner within the jurisdiction a ship or vessel to be so used, the attempt or endeavor must be shown to be to equip in that distinctively warlike manner within the jurisdiction that ship or vessel so to be used. Now, I will show your lordships, when we come to the evidence in this case, that it never was once suggested that beyond that which was actually done upon the ship *Alexandra* at the time of seizure, there was a grain of evidence going to show that anything of a different character, anything *diversi generis*, was to be done to the ship before she left the jurisdiction; and I say that advisedly, bearing in mind that there was an attempt made, with which I shall qualify my statement, to show something about guns to be put on board, which was given up by the attorney general at the trial, but which I will deal with as the present attorney general has now renewed the charge. But, putting that out of the case, I say it carries the case not the least further. If you rely on an attempt or endeavor, you must show that the attempt or endeavor was to do that particular act which, if the attempt or endeavor had not failed or been interrupted, would have been the offense intended by the act of Parliament.

To explain my meaning, I will suppose that there is a ship at the wharf in Liverpool. Up to the point at which I speak of her, she has received no distinctive or definite armament for war; but there are coming down one of the streets of Liverpool a number of heavy wagons laden with guns and gun slides, and other distinctive equipments for war, as to which I show that it was intended clearly to put those guns, and other warlike equipments, on board that ship; and I prove by evidence about which there is no doubt, that John Smith was the person controlling that operation, ordering and directing those wagons, and that he intended to put those warlike armaments on board the ship, and that all that was done of course, I assume, (I do not repeat it at every turn,) with the intent and object that the ship should be employed by one belligerent to cruise and commit hostilities against the other. But something happens to stop the progress of the wagons; either an officer of the customs is premature, or something else occurs; the whole are arrested; the guns never reach the ship. But the evidence is clear that if not arrested they would have been put on board the ship. I say there, that that was clear evidence of, and all that was meant by, an “attempt” or “endeavor.” If there had been no interruption, if the wagons had gone their course, and the guns had been put on board, the offense, I will not say would have been complete, but would have come under the first category; as being an equipment of a distinctively warlike character, it would have come under the first section of offenses. It has not been completed; it was arrested and stopped, but the evidence shows that it was only owing to the casual circumstance of its having been arrested that it was not completed. That is an attempt or endeavor, and that would be an indictable offense under the act. Your lordships will judge whether, if it had been made a point of by the late attorney general, there was a grain of evidence to show that anything of the kind occurred in this case.

Mr. BARON BRAMWELL. To do the thing, and to attempt to do it, cannot be two offenses. Surely a man cannot be guilty of the two offenses, attempting to do it, and then doing it if he succeeds in doing it; why? not because the first is pardoned by the commission of the second, but for this reason, that if he does it, he commits one offense,

and the act of Parliament says that if he attempts to do it and does not succeed he commits the offense also.

MR. BARON PIGOTT. The attempt is the same if he does not accomplish the object.

SIR HUGH CAIRNS. The attempt was the same up to the point where the attempt was arrested; his purpose and object was just the same as that of the man who completes the offense. Well, as to the next, "aiding and procuring to be equipped," that is *qui facit per aliam*, &c.; he commits the offense in that way. He does not do it by his own hand, but he procures the complete offense to be committed.

MR. BARON BRAMWELL. But for that this sort of point might arise, that a man could not be said to do it if he had contracted with another person to do it for him, because that person, though in one sense he might be an agent, might in another sense not be so. A contractor might have a right to say I will do that in my own way, and to avoid any question of that sort the legislature says, If you procure it to be done you shall still be taken to have committed the offense.

SIR HUGH CAIRNS. Yes, that would be the second point. Then the third is, "who shall knowingly aid or assist, or be concerned in the equipping, furnishing, or fitting out, or arming of any ship or vessel," what does that mean?

It means being concerned in either that which has gone on to completion, and is the complete equipment, or that which would have gone on to completion if it had not been interrupted, but which was intended to be the complete equipment which is struck at by the act. And your lordships will find, if that is the true construction, that the whole course which was taken by the late attorney general at the trial is perfectly clear and perfectly accounted for the course that was followed by the learned lord chief baron in his charge—that no person suggested that as distinct from what was found on the *Alexandra* at this time, as to which there was no controversy or argument; there was something which never had got to the *Alexandra* apart from the guns, which was a point given up at the time.

LORD CHIEF BARON. There was no evidence establishing the point as to those guns; the attorney general at last gave that point up.

SIR HUGH CAIRNS. Yes, my lord; he gave it up.

LORD CHIEF BARON. He said the evidence failed; there was no evidence that the guns were to be put on board at Liverpool.

SIR HUGH CAIRNS. No, my lord; not the least.

LORD CHIEF BARON. It might be matter of supposition that the guns were to go in another vessel, and that they were to meet somewhere else.

SIR HUGH CAIRNS. There was no evidence, as I shall submit to your lordships by and by, that the guns were ever intended for this ship, but, on the contrary, there was the very strongest evidence that they were not intended for the ship; but in addition to that, there was not a particle of evidence that it was intended to put on board any guns in Liverpool.

LORD CHIEF BARON. I certainly should come to the conclusion that very likely the vessel was to be sent somewhere else out of this country, and the guns were to be sent by another vessel, and that the guns were to be put on board the *Alexandra* in some other port, not a port of this country, or in any other part of her Majesty's dominions.

SIR HUGH CAIRNS. As I shall submit to your lordships by and by, there was really not a particle of evidence upon which an opinion even could be formed upon the point; but it was idle to suppose that there was any evidence which could be rested upon to show that if there was not what is meant by the equipment in the first part of the section, there was anything short of that upon which any one could be called in question.

MR. BARON BRAMWELL. What a strange thing it would be if it were otherwise, because the ship is to be forfeited if any one of the offenses is committed. Then some man might be guilty of assisting, although the owners to whom the ship belongs are not guilty of equipping. Then because, in some way or another, which I own is inconceivable to my mind, some one is guilty of assisting, although the owner is not guilty, the ship is to be forfeited. All that was intended to be comprehended was this: supposing a man were to say this, "I really was not engaged in fitting it out. I was only the smith," and another may say, "I am only the carpenter;" although they were helping knowingly, it was intended to evade the sort of argument that might be used when people were informed against under this act of Parliament and proceeded against by information. "I am not the single person who was doing the entire thing." It is answered thus: "But you were assisting at it, and the thing was to be done." It seemed to me, with great respect, that that is the reason why the attorney general treated the question in the way he did. You know, Sir Hugh, one is desirous to pay every attention and respect in a case of this kind to the American authorities, and it does strike one, although you said that a good deal of rubbish had been spoken about this matter, there is an American authority the other way; I mean the one you have cited already; one where it was held that the principal actors must be guilty in conjunction with each other.

SIR HUGH CAIRNS. That is the Quincy case.

LORD CHIEF BARON. That is very explainable, assuming that the offense consists

in equipping and furnishing; I use those words as one would X and Y; a man is guilty of the offense who assists in doing one, if the intention is ultimately to do both. It seems to me that there can be no doubt about that.

SIR HUGH CAIRNS. Yes, but it might well be with regard to the persons assisting, taking the case of the blacksmith or the carpenter separately, that one might be assisting in one operation and the other in the other, although as regards the principal actor you must show that he has intended to do the whole complete and entire act. Now, my lords, I must dwell a little longer on this point for another purpose. I know not whether an argument which I collect from an expression of the attorney general in moving for this rule, is to be urged by him on the present occasion. From the note I have read I collect the argument, and I will take leave to read it to your lordships. I may be wrong, but it certainly does seem to me to contain a proposition of the most startling character in reference to this act of Parliament that I have ever read. The attorney general, in moving for the rule, said this upon the point I am now dealing with. He said, "Not only is the attempt or endeavor struck at, but any one 'who shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming.' Now that is a clause which is remarkable because it strikes at the case of a person within her Majesty's dominions, knowingly aiding, assisting, or being concerned in the equipment, whether or not the equipment takes place *quoad alios* elsewhere." This is the most startling proposition I ever heard of. I do not know whether the attorney general on reflection will venture to argue in favor of that proposition, but his argument in moving for the rule was that by the force and virtue of these words, "be concerned in aiding and equipping," if you get a person knowingly assisting in her Majesty's dominions in that which is to be the equipment of the ship, it is no matter if the equipment is *quoad alios* to take place elsewhere.

LORD CHIEF BARON. Where do you cite that from?

SIR HUGH CAIRNS. From the short-hand writer's notes of the argument; your lordships will find it at page 54 of the printed book; I will read the full passage: "The statute desires to stop the thing in *hinc*, to cause the thing not to be done; and therefore, instead of stopping at these words, it goes on, 'or attempt or endeavor' to do any one of these things; so that, however little progress may have been made, and in whatever imperfect condition the ship may be as to these things, when she is seized, if any step has been taken which is an attempt or endeavor to do any one of these things, provided it be a prohibited attempt, it is struck at; and not only the attempt or endeavor, but any one who 'shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming.' Now, that is a clause which is remarkable, because it strikes at the case of a person within her Majesty's dominions knowingly aiding, assisting, or being concerned in the equipment, whether or not the equipment takes place *quoad alios* elsewhere. Any person who does any one of these things within her Majesty's dominions offends against the act; that is to say, any one who equips, who attempts or endeavors to equip, who procures to be equipped, or who knowingly aids, assists, or is concerned in the equipping, wherever the equipment is completed, and whoever be the person by whom it is made." Now, my lords, the Crown is going to argue this—

LORD CHIEF BARON. I think there cannot be a doubt that, before you talk about attempting, endeavoring, aiding or procuring, or anything of that sort, you must first see what is the offense created by the act of Parliament; what is the act that is not to be done. Then, when you have ascertained what that is, there can be no doubt that to aid or abet in that, to procure that, to assist in that, and so on, is a minor offense against the same statute, but it does not create a new and different one; and I own I think there was a great deal of mistake on that point, and much confusion has arisen from the act itself, and the attempt to do it being put into different categories. I called your attention very early to-day to that distinction. I said, let us know what we are to understand as the act forbidden, because to assist, to aid, procure, or order, and so on, in any other matter than that which is forbidden, is no offense at all; and therefore it was that I put the question to the jury: "Do you believe that this vessel was intended before it left Liverpool or any other port of her Majesty's dominions to be in such and such a condition, either equipped or armed? because if that was not intended, then all the assistance and so on is nothing." It was admitted the vessel was not completed. I said, if it was not intended to put the vessel into a condition so as to commit the offense which the act was made to prevent, all the attempts are of no importance.

SIR HUGH CAIRNS. I should beg leave to illustrate it in this way to meet what I understand to be the argument of the Crown, intimated in the words I have read. Suppose the case of a ship clearly and admittedly unequipped, unfitted, and unarmed, but built within this country.

LORD CHIEF BARON. Allow me to say that there is an omission in a part of my summing up which seems to have led to some mistake. I think the late attorney general very much misunderstood it, but everybody who read it with the smallest portion of candor must, I think, perceive that the word "if" has been left out. I am

made to say this: "Because, gentlemen, I must say it seems to me that the Alabama sailed away from Liverpool without any arms at all, merely a ship in ballast, unfurnished, unequipped, unprepared, and her arms were put in at Terceira, not a port in her Majesty's dominions. The foreign enlistment act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever." All that was prefixed by the word "if."

SIR HUGH CAIRNS. Yes, it was one sentence prefixed by the word "if."

LORD CHIEF BARON. "I must say it seems to me that if the Alabama" is how it should be read; and I think that no person reading it with any candor would suppose that I had taken on myself to say that the Alabama did all that, because I knew nothing about it; there was no evidence about it.

MR. ATTORNEY GENERAL. We all understood your lordship so.

LORD CHIEF BARON. It is very obvious what I mean.

MR. ATTORNEY GENERAL. It is merely a clerical error.

SIR HUGH CAIRNS. It is correct in one of the copies.

LORD CHIEF BARON. If I had known that it had appeared in either copy, I certainly would not have said a word about it; for the accuracy of the report is really highly praiseworthy.

SIR HUGH CAIRNS. Your lordship will find it at page 245* of the smaller copy.

MR. ATTORNEY GENERAL. Your lordship will remember that I read from the smaller copy when I moved for the rule.

SIR HUGH CAIRNS. You will see, my lord, it is not only that you said "if," but you said "if it were true that."

LORD CHIEF BARON. Yes.

SIR HUGH CAIRNS. Now, my lords, I have adverted to this suggestion, which I should hardly think was gravely made by my friend in moving for the rule. If it were, all I should say is this, that the case I understand to be put there is the case of a person laboring upon or engaged upon those things which are to become the equipments of a ship, and those equipments being put on board a ship, not in her Majesty's dominions, but elsewhere. I venture to say that it is the wildest proposition that ever was contended for to say that that can be struck at by the foreign enlistment act under those words, "being concerned about the equipping," the meaning of which is being concerned about that kind of equipping which, if actually perfected, would be an offense within the first part of the section, namely, equipping in a warlike manner within her Majesty's dominions.

Now, I said that I would ask your lordships to consider for a moment what has been the kind of argument brought to bear on the construction of this statute not so much in court as out of court, the argument which is conducted by putting extreme cases, and I am now, my lords, not dealing with that which perhaps may be called the more flexible principle of international law generally, but with the strict and hard words of a municipal act of Parliament, and above all, (I need hardly remind your lordships of that which is obvious on the face of it,) an act of Parliament creating a misdemeanor—a novel misdemeanor which was never before the subject of legislation, and not only so, but an act of Parliament creating, in addition to the misdemeanor, a forfeiture of property which may be very valuable, and which, in one reading of the act of Parliament, may be forfeited occasionally in the hands of a person entirely innocent of any offense. But even on the ground of this being an act of Parliament creating a misdemeanor it would have to be constructed in the strictest and most literal sense of the words. What is the sort of extreme case put to test the applicability of this act of Parliament? I will take the case which was repeated to-day by Mr. Baron Bramwell of two ships, the one a ship destined ultimately to be equipped out of her Majesty's dominions, the other bearing on board the warlike equipment to be put on board the first ship, the two lying side by side in one of our docks, the two leaving together, sailing together, and passing together out of the neutral territory, and then for the extreme case supposing this, that immediately outside the neutral ground a transfer is made, and all the equipments which are in the one ship are put into the other, and she thereupon becomes an equipped ship or vessel of war. Well, it is said, would not this be an evasion of the act of Parliament? Now, when I speak of the act of Parliament I certainly do ask your lordships to consider what is the meaning of an evasion. When I speak of an evasion I understand it to be the avoiding the committing an offense laid down by the act of Parliament; and why a man should be punished for avoiding committing the offense is one of those things that I cannot understand. The question is, has he committed the offense? If he has committed the offense, let him be punished; but if not, why should he be punished for avoiding or evading the commission of the offense? Let me deal with an argument of that kind in the way that it ought to be dealt with, namely, by putting extreme cases to test on the other side. In the first place, I must observe that this is a practical act of Parliament, I hope, or at least that it was intended to be so, and the extreme case which is supposed is not a practical case, because we know very well that in practice it would be an operation attended

* See page 129.

with very great difficulty and danger, and in most cases not possible at all on the high seas to transfer to an unequipped vessel the equipments destined for her which are to be put out of another vessel. We know that in practice an operation of that kind must be conducted in a port, and persons would be out of their senses to attempt to conduct the operation on the high seas, and I do not suppose that such a case could be found.

Mr. BARON BRAMWELL. Except that of the Alabama.

SIR HUGH CAIRNS. No, my lord; that was in port. It is in evidence in this case, fortunately, that she was equipped at the Azores.

The ATTORNEY GENERAL. Not in port.

SIR HUGH CAIRNS. She was in a roadstead, if not in port. If she was not in a port she was in a harbor or roadstead, which is the same as a floating dock. However, I shall have something to say about the Alabama, and the view of the attorney general on the subject of the Alabama too. But in the next place, I say that this is matter of positive law, and draw the line as sharply as you please, the more consistent will it be with the construction of an act of Parliament of this kind, which is to fetter and restrain the liberty of the subject and create a misdemeanor and forfeiture, to hold that the line is to be drawn sharply, strictly, clearly, and distinctly. If you once get to this, that there is one thing on one side of a line and another thing on the other, that is exactly the way an act of Parliament of that kind ought to be treated. There ought to be no reasoning about it; the act of Parliament ought to say what is an offense and what is not, and when you get at that by legitimate construction you must observe that line, and you are not at liberty to wander into pre-conceived ideas as to what the spirit of the legislature might be, and say that the words are intended to be extended to meet possible cases, because the words literally do not meet, or do not deal with those cases.

LORD CHIEF BARON. In other words, Sir Hugh, there is no equitable construction of an act of Parliament creating a crime.

SIR HUGH CAIRNS. There is none, my lords.

Mr. BARON BRAMWELL. I assure you I would rather hear you than myself, but I have a thing in my mind that I should like to have cleared up. I quite agree with you as to what you have said about the word "evading." I remember hearing Lord Cranworth say that it was rather an uncivil way of speaking to say that a person had evaded infringing an act of Parliament. I did not use the word "evade" with regard to this act of Parliament.

SIR HUGH CAIRNS. I am aware of that, my lord.

Mr. BARON BRAMWELL. Well, there is another thing. You say there is a line to be drawn. I quite agree that there is a line somewhere to be drawn, but we may always say this, that although there is a difficulty in saying where the line is to be put, certain cases may be clearly on one side, and that the wrong one. But it might be said that where substantially the vessel to be fitted out and equipped has the protection of, I will not say the *presidia*, but the protection of the port or territory of the neutral, that practically, there it is an infringement of this act of Parliament, although the final equipment may be out of the territory. You know the way in which we should solve that difficulty. We should leave it to the jury, and say, "Substantially, do you find that this is within the protection of the neutral territory?" and the jury might answer, that according to their view it was so. How far that would extend to—whether one ought to leave it to the jury—that the vessel must have gone three miles, or whether one ought to say that the vessel must have gone one hundred miles, I do not know, but I cannot conceive that it would be a correct leaving (I do not say it is; I want you to tell me that. I ask, would it be a correct leaving) to say to a jury, If you are of opinion that substantially it was within the territory, or under the protection of the territory, or within the influence of the territory of the neutral that this thing was done, that then it was an infringement of the act. What I want to know is, would that be correct? I do not mean to say in those words, but in any form of expression leaving it to the jury to say, Do you find that substantially it was by means of the territory of the neutral that this thing was done.

SIR HUGH CAIRNS. I will tell your lordships very frankly, if you will permit me to do so, what occurs to me upon that point. I apprehend that what the jury must make up their mind about is this, what is the equipment? Was the equipment of the vessel the preparation in the workshops of the port of this or that thing, afterward to be put on board the ship, the intention being all along that they never should be put on board within the limits of the neutral territory? Was the equipment of the ship the construction within the workshops of the port of those articles which were never to be put on board within the dominions, or was the equipment the transfer when the ship has passed out of the dominions into the high seas or some other place? Which of the two is the equipment? They cannot both be equipments? One or other must be the equipment in question. Can it be said that the fabrication of a gun-carriage in a workshop in the neutral port, there being no intention to put that gun-carriage on board the ship, and it being proved that there was no intention to put the carriage on board the ship within the neutral territory, is an equipment of the ship within the neutral territory? It would be idle to say so. Then can the transfer outside

of the neutral territory, however easily performed, of the one to the other, be an equipment within the territory? I apprehend that it would be a contradiction in terms to say that it is.

Mr. BARON BRAMWELL. May the ship not be furnished? Take the case of a steam-tug lashed to her side, and towing her out, and the steam-tug having on board the armament, would you not say that that vessel had been furnished within the neutral territory?

SIR HUGH CAIRNS. I am much obliged to your lordship for supposing that, because it leads me to one of the cases which I am going to put to your lordships. Supposing it was suggested that the preparation within the dominions of an armament for a ship is the furnishing of that ship with the armament, and that therefore the mere preparation is sufficient, there being no intention to put it on board within the dominions; that is the case your lordship supposes?

Mr. BARON BRAMWELL. Yes.

SIR HUGH CAIRNS. Would not that argument equally apply if the armament were provided within the jurisdiction for the ship although the ship herself never came within the jurisdiction; although the ship was lying outside, never in the jurisdiction; although there was no ship to be forfeited, attached, or arrested? It would be equally true if that were the construction to be put on the word "furnish," if you found the case of a man within the jurisdiction furnishing, preparing, and getting ready a complete armament for a ship which herself never came into the jurisdiction at all. It necessarily requires the connection of the two, and the mode in which that connection must take place is evidenced by the use of the terms "equip," "furnish," or "fit out" a ship, the whole representing a work to be performed upon the ship. The ship is to be seized with the tackle and furniture which belong to her or which you find on board the ship or vessel, and the whole is represented as a work done within the dominions, and which would enable her to go out with that work on board.

Mr. BARON BRAMWELL. I think I might say, "I am furnished with arms," and if a person were to ask, "Where are they?" and I were to reply "My servant is here, and he has got them," that would be a correct expression, but it would not be a correct expression for me to say, "My servant is coming to meet me; he will be here in half an hour, and I am furnished." I ought to say, "I shall be furnished." A vessel leaves her port with another vessel, carrying the arms by her side. I quite agree as to the vessel lying outside the port. Pray do not suppose I have any opinion about the matter. I have not, indeed.

SIR HUGH CAIRNS. I rather think your lordship would not be of that opinion. You are kind enough to put the case for me to consider, but what I desire to show is this: Let us disembarass the case of that which has the aspect of producing a result, in point of argument, when it really has not. Let us abandon the argument or the idea of the ships being lashed side by side, for that can make no difference. I will take the case of the ship I supposed built at Southampton, but unequipped, and sailing from Southampton. It turns out to be desirable to have the armament of that ship prepared at Birmingham. The object and intention of every one is proved to be to tow the hull of the ship over to Brest, to ship the armament at Liverpool, and to carry it round by sea to Brest. According to what your lordship suggested as the possible interpretation, it would be just as correct to say in that case that that ship was furnished with the armament because it was known that at Birmingham there was an armament prepared ultimately to be brought on board the ship. Just as your lordship said in the case of the servant you would say in that case, Here is a ship which by license of expression is furnished with an armament, that is to say, an armament is constructed which is ultimately to be brought round to some place and to be put on board. But could it be contended there for a moment that in the words of this act of Parliament the preparation of that armament in Birmingham, which never is to touch the ship here, but which is to go to Brest for the purpose of being furnished, is an equipping within the misdemeanor or a fitting out or a furnishing or an arming of the ship with this particular intent, creating a misdemeanor, and leading to the forfeiture of the ship or vessel with furniture, equipment, and tackle and apparatus on board. My lords, I apprehend that the case is not bettered at all if in place of taking Birmingham we take the case of an armament provided and put on a ship, the ships being side by side. The contact of the two is the thing struck at. There is no contact or equipping in the sense of the act of Parliament, unless the contact is made out to occur within the jurisdiction.

Then I ought to advert to another matter which your lordship was good enough to suggest, namely, the protection of the neutral territory. Now, my lords, that again is a matter which it would be very difficult to apply as a test, or as a rule, for a question to be put either to a jury or to be applied to the construction of an act of Parliament. As regards a country like England—an island state—of course there is a great waste surrounding her of open sea which a ship has to traverse; but among the many nations between whom this act would have to be applied, it might well be that a state was divided from another merely by a river, and that there would be no possibility in

practice in some cases of a belligerent having the opportunity of that waste or intervening space in which a ship might be captured or arrested. And yet it could hardly be said that a work, because it was done under the protection of neutral territory, was to be judged of in a manner different from the manner in which we should judge of a work done passing out of our territory into the high seas. I was going to submit to your lordship an example of a very sharp and hard case under the same section. Let me take the alternative about delivering commissions. "Or shall within the United Kingdom, or any of his Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to his Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor." You may say, surely it is a most extraordinary, capricious, and whimsical thing, that a natural-born subject of her Majesty, who is responsible for his acts wherever he may be, shall, if on one side of that line which constitutes the limits of her Majesty's dominions he delivers a commission, be guilty of misdemeanor; but if he delivers the same commission on the other side of the line, he is perfectly free, and not culpable in any way whatever. Yet so it is. It may be very sharp, but that is the offense. There is no offense, unless you prove to the letter that it is done within the jurisdiction, just as it is asserted in this information that the whole of the equipment took place within the dominions of her Majesty. Again, one must always remember that the power of the belligerent in this case comes up to just as sharp a rule and as sharp a case as the case I have supposed. For instance, as I supposed that the ship unarmed and unequipped may pass beyond the neutral line, and then be equipped, wherever the equipment may come from, so I suppose, on the other hand, and assert that the belligerent, if he is on the watch—the adverse belligerent—may bring his ship of war up to the neutral line, and the very moment—the very instant—the ship which is to be equipped passes that line, that very moment, while it is yet unarmed and unequipped, and while it is totally incapable of any sort or kind of resistance, the belligerent has it in his power, having waited there, expecting its arrival, to arrest it when it comes, and take it while defenseless.

MR. BARON BRAMWELL. If I am not mistaken, you can tell me this. I should imagine that the belligerent ship of war might make a third in the party I have supposed, and go out with them. The twenty-four hours' start would not apply there.

SIR HUGH CAIRNS. No, because it was not a ship of war; the twenty-four hours' start would not apply in that case, because the ship going out unequipped is not a commissioned ship of war.

MR. BARON BRAMWELL. That is according to the hypothesis!

SIR HUGH CAIRNS. Yes, my lord, *ex hypothesi*. Therefore I am not at all prepared to suggest that your lordship's question is not entirely to be answered in the affirmative, and that it might not become a party of three; the rival belligerent going out in the company of its two companions, and falling upon them and taking possession of both of them—taking possession of the one because she had contraband of war on board, and taking possession of the other because it was a ship going to be equipped with those articles of contraband, and therefore being contraband. My lords, as I have gone perhaps out of any argument which has yet been suggested on the other side, as to these extreme cases, I might take notice of an utterance which I do not think dropped from the attorney general, but which is very commonly used, and which perhaps may find utterance in this court before the argument is over, about the intention and object in all these cases being that our ports should not be used as arsenals for one of the belligerents. Now that is a very inaccurate expression also.

LORD CHIEF BARON. Sir Hugh, if you are going into a new head of argument perhaps we had better stop here, as my brother Bramwell is about to retire, and it is very nearly 4 o'clock; there is a considerable want of light, and if it is not inconvenient to the bar, we shall sit to-morrow at 10 o'clock precisely instead of half-past 10.

SIR HUGH CAIRNS. If your lordships please.

LORD CHIEF BARON. I hope that is convenient to the bar.

MR. ATTORNEY GENERAL. Most convenient to all of us.

SECOND DAY—WEDNESDAY, November 18, 1863.

SIR HUGH CAIRNS. My lords, the question which I was taking leave to consider yesterday when your lordships adjourned was, whether, supposing you could show in point of evidence that there being in this country a ship wholly unarmed and wholly unequipped, it could be proved that there was a certain equipment and a certain armament prepared and made ready for that ship, and as it were ear-marked, set apart in some store or repository; and supposing at the same time you had conclusive and distinct evidence that there was no intention to put that equipment or armament on board in this country, but, on the contrary, that the intention throughout was to put it on board out of the Queen's dominions, whether that would be an equipment or a furnishing or a fitting out or arming of the ship within the act of Parliament. My lords, that was a

question put by way of suggestion by Mr. Baron Bramwell, to which I was addressing myself. Now, before I part from that, in addition to what I remarked yesterday by way of argument, I would ask your lordships to test that question in this way. Suppose that an indictment under this act were framed under such circumstances, an indictment with reference to the arming of the ship, of course you would be obliged to allege that the person indicted did, within her Majesty's dominions, arm a ship or vessel of such a name with the intent which is mentioned in the act of Parliament; how would that be supported? Would it be supported by proof of this kind; not that there was any armament put on board the vessel, but that there was a particular store or repository in her Majesty's dominions within which there had been prepared and set apart a certain armament destined for the ship; but the evidence showing at the same time that the intention was to put that armament on board, not within her Majesty's dominions, but without? My lords, I apprehend that the answer to that indictment would be, "That is not an arming of the ship; you have failed in the allegation which you have made." If that is so with regard to armament, it would be so with regard to equipment, and it would be so with regard to furnishing or fitting out. In truth, let us take common language as our guide upon the subject. I allege that a man furnished a house. Is that allegation proved, in point of fact, if I show that the house has not and never had a particle of furniture in it, but that a person went and ordered furniture to be made, and had it prepared, and had it set apart in some repository with the view to furnish the house at a future time and under different circumstances? And your lordships will observe how far the argument which I am combating would have to go, because, if the argument were a sound one, it would be equally an offense within the act of Parliament to show that there had been within her Majesty's dominions an armament or an equipment prepared for a ship which was never within her Majesty's dominions at all; it would be equally true to aver that A. B. armed, or equipped, or furnished, or fitted out a ship.

LORD CHIEF BARON. Or attempted to do so.

SIR HUGH CAIRNS. Or attempted to do so; that is to say, if you could show that the ship being without the dominions, and never having been within them, or intended to be brought within them, A. B. had prepared or attempted to prepare a certain armament or equipment with the view to be carried out of the Queen's dominions and put on board that ship.

But, my lords, I would also observe that, although it is extremely convenient and useful in endeavoring to arrive at the true construction of an act of Parliament of this kind, to deal with a case such as I have suggested, and to consider how the law would be, your lordships must also bear in mind that there is no suggestion and no evidence in this case (and this I undertake to show when I come to deal with the evidence as to the *Alexandra*) that there was any armament or equipment, or any furniture or fitting out, other than what appeared upon the ship herself. Of course I except the matter with regard to the guns, which I told your lordships yesterday was ultimately given up at the trial, although originally alleged by the attorney general; but over and above that, there was no suggestion that there was any kind of armament or equipment away from the vessel, prepared for her, different from that found on board, if any was found on board.

My lords, I also should observe, in speaking of the extreme cases which were put by way of testing the construction of the act, that I was about, when the court rose, to call your lordships' attention to a phrase very often used, and I am not sure that it has not been used in the course of this trial. Some persons who take strong views as to cases of this kind say that it is a thing not to be tolerated, that the ports of this country should be turned into arsenals or used as arsenals for one of the belligerent powers. Now, if that is properly understood, I have not the least objection to the expression. If it means that you shall not use one of our ports for the purpose of putting on board a ship a warlike equipment, I agree to the term; but if it is intended to designate anything more than that, I entirely object to it; because there is not the slightest doubt that, according to the popular meaning of those words, the law, whether right or wrong, is such that you may practically turn our ports into arsenals for one of the belligerent powers. There is nothing whatever that I am aware of in the law of this country to prevent one of the belligerent powers, for instance, employing or using a manufactory of arms in one of our ports with the view of shipping those arms afterward. There is not anything that I know to prevent a belligerent power having a manufactory of arms in any seaport of this kingdom, such as the government of this country have at Woolwich, and making guns and making small fire-arms, and making shot and shells on a large and extensive scale, and afterward putting those guns and ammunition on board a freighted ship and sending them to a foreign port, subject, of course, to the liability of being captured as contraband goods; but so far as making an arsenal, or making a manufactory of arms in our ports, or near our ports, is concerned, the law of the country is so that it may be done, and in practice something very like it is done every day.

My lords, in the case of the American act of Congress there were the decisions to which I took leave to call your lordships' attention, which were available for our instruction

and information as regards the law in the United States. Unfortunately, having gone through the observations which I had to make upon the construction of our English act, I am not able to supply your lordships with any judicial authority upon the subject of the construction of that act in this country. The fact is, as has been stated, I believe, on both sides of this case, and I believe it is accurate so far as we know, that there never has been an instance in this country where any judicial construction has been put upon this act of Parliament.

LORD CHIEF BARON. My brother Martin intimated to us that he recollected perfectly well a case tried before Mr. Justice Coltman.

SIR HUGH CAIRNS. That was the case of a Sicilian ship—Granatelli's case.

MR. ATTORNEY GENERAL. We have a note of the summing up in that case. I cannot say much about its authenticity, for it does not come from a source which the courts are in the habit of looking at; but if it be accurate, it seems to have been ruled by the learned judge upon that occasion—

MR. LOCKE. I have it from the Times newspaper, my lord.

MR. BARON CHANNELL. Lord Chelmsford was the attorney general of the day, I think; he was in the case.

MR. LOCKE. There is a full report of that case in the Times newspaper of the 6th of July, 1849. I do not know whether your lordships will pay attention to a report of that kind, but it seems very accurately done, and there is the summing up of Mr. Justice Coltman. I should also tell your lordships that Mr. Justice Maule was on the bench at the central criminal court along with Mr. Justice Coltman upon that occasion, and there is one very important observation.

LORD CHIEF BARON. As far as my experience goes, the circumstance of a learned judge being present has very little to do with his opinion about the matter. Unless in cases of very serious importance, there are seldom two judges present in the same court. That is for the public convenience.

MR. LOCKE. The case occupied no less than four days in being tried; and on the one side was Sir Frederick Theaiger, and on the other Sir FitzRoy Kelly, besides other counsel.

MR. BARON CHANNELL. The corporation of the city of London employ a short-hand writer; whether they did so at that time or not I do not know.

MR. LOCKE. Yes, my lord.

MR. BARON CHANNELL. The report furnished by that short-hand writer is not a full report of the case; that is to say, of the speeches of counsel; but all points of law ruled are taken notice of; and it is printed by some bookseller in Chancery Lane, who publishes it. It comes out quarterly or monthly, and copies of that work are sent to the judges. Whether that practice existed at the time when the case now referred to was tried or not, I do not know; if it did, we can have a copy.

MR. LOCKE. I can tell your lordship exactly what the practice was at that time, and as it now is. A short-hand writer is employed by the corporation, and copies are sent to all the members of the corporation; I do not know whether to the judges or not.

MR. BARON CHANNELL. Yes, they are sent to the judges.

MR. LOCKE. That short-hand writer merely takes down the evidence; there are no objections by the counsel taken down, nor any arguments, nor any summing up of the judges; it is simply the evidence. I have that book, if your lordships like to consult it; but in consequence of there being no points taken, nor any summing up, I consulted the Times newspaper as the best medium that I could adopt, and there I found a very long report, during four days, and one or two objections which were taken; one by Sir FitzRoy Kelly, which bears directly upon this question, which was overruled by Mr. Justice Coltman; and likewise the summing of the judge; it is not given at very great length.

SIR HUGH CAIRNS. Perhaps my learned friend will allow us to see the note, *valent quantum*, which he has been able to obtain. I recollect, my lord, proceedings which took place on the subject elsewhere.

LORD CHIEF BARON. It is not usual in this court, nor, I believe, in any court to refer to the report of a trial in a newspaper.

SIR HUGH CAIRNS. No doubt, my lord, that would be very inconvenient, and I do not propose it at present.

LORD CHIEF BARON. The only use which I can make of it is this, that my brother Martin, who was present at the trial, should be furnished with the newspaper report to refresh his recollection, and if he could report to us anything which was decided, it might be useful. I think that that is the only way in which one could apply it.

SIR HUGH CAIRNS. My learned friends who are with me will look at what we have got; but I was about to say that I recollect very well proceedings which took place elsewhere with regard to the ship in question, and with regard to those who had chartered her, who were gentlemen of the name of Granatelli and Prince Scalia, who were taking part in the warlike proceedings against the government of the King of Naples over Sicily at that time; and according to my recollection of the facts which took place, there is not the least doubt (whether there were arms on board or not,

[I do not know) that the ship was fitted out as a ship for warlike purposes in this country. I do not think that that was ever disputed. However, we shall see if any information can be had upon that case; but the result of the trial was, that those who were accused were acquitted, and the matter then came to an end; the Crown did not take the course which they have done here of moving for a new trial.

My lords, apart from that case, which I do not think will be found to bear at all upon the law which is here to be determined, I am not aware of any other case which has arisen, or in the course of which a judicial construction has been put in this country upon this act of Parliament. My lords, that is itself a very remarkable circumstance, and I will ask your lordships to bear it in mind throughout this case. It is now seventy years since the American act of Congress was passed; it is upward of forty years since the English act of Parliament was passed; and that is, I take leave to say, a very remarkable circumstance. Occasions must have arisen, I should say, in the United States repeatedly, and in this country also more than once, where you would have found instances of ships convertible into ships of war, built in such a way as to be easily used for ships of war, taking their origin either in a port of the United States, while a neutral power, or in ports of this country while a neutral power, and leaving those ports without warlike equipments; instances must have occurred again and again in which those ships might have been made the subject of proceedings under the foreign enlistment act, if it ever had occurred to the mind of any person that proceedings could be taken in a case where you had not the warlike equipment on board the ship.

My lords, in the absence of decision upon the subject, it is not altogether improper to refer to what we have as matter of history in this country of cases in which proceedings were not taken—cases which were the subject of discussion and of consideration, and in which no proceedings of the kind took place. My lords, I took leave (and the lord chief baron perhaps may have a recollection of the circumstance) to mention, in the course of the trial, a case which excited a great deal of attention in this country, which was commonly called the *Terceira* affair. That occurred, I believe, about the year 1830. So far as it is necessary to mention it or refer to it now, the case was this: It was at the time at which warlike proceedings were taking place between those who supported Don Miguel and those who supported the Queen of Portugal; and in the course of those warlike proceedings there came to Plymouth, in this country, a certain number of Portuguese refugees. They got a ship, and they left Plymouth in that ship, and sailed for *Terceira*; and there was exported from this country to *Terceira* in another ship a quantity of arms and warlike equipments, ammunition, and so on; and those articles so exported from this country were subsequently transferred into the ship which had gone with the refugees from Plymouth to *Terceira*. The government of this country (rightly or wrongly we have not to decide) seemed very much annoyed at this, and they took a step which was greatly the subject of censure at the time, in the waters of *Terceira*, the waters of another power; they gave directions to our ships of war there to intercept and to fire upon one of those ships which had gone so out. The matter became the subject of great controversy in England, and on the part of the government this allegation was made. It was said on the part of the government, "Suppose all that is stated to be the case—suppose that our ships did fire upon those refugees in the waters of *Terceira*, still while they were in this country they committed a breach of the foreign enlistment act, and made themselves liable to capture and to detention, because, although they did not put their armament on board the ship in which they left this country, they sent it out in another ship with the view and intention of afterward transferring it into their own ship and incorporating the two." Of course, if that had been the case even, it would not have justified an attack upon them in the dominions of another power, because we could not seize within the dominions of another power a ship for a breach of our own foreign enlistment act. But what I want to ask your lordships' attention to is the manner in which that doctrine was received, when it was put forward, by those who certainly were no mean authorities upon what was the power of the government in this country with regard to an act like the foreign enlistment act. Mr. Huskisson was one of the ministers who had taken a part in the passing of the foreign enlistment act, and of one the supporters of the policy of it in general, for he was a colleague of Mr. Canning. Mr. Huskisson, in his place in Parliament, as we find from the report of his speech in Vol. III of his speeches, at page 559, said this: "It might be supposed from my right honorable friend's remarks that during the fifteen years we have been at peace, our neutrality had never before been violated. Has my right honorable friend then forgotten the repeated complaints made by Turkey, and has he forgotten that to these complaints we constantly replied, 'We will preserve our neutrality within our dominions, but we will go no further!' Turkey did not understand our explanation, and thought we might summarily dispose of Lord Cochrane and those other subjects of his Majesty who were assisting the Greeks. To its remonstrances Mr. Canning replied, (and my right honorable friend, being then a colleague of Mr. Canning, must be considered to be a party to his opinions:) 'Arms may leave this country as matter of merchandise; and however strong the general inconvenience, the law does not interfere to stop them. It is only when the elements of armaments are combined

that they come within the purview of the law, and if that combination does not take place until they have left this country, we have no right to interfere with them.' Those were the words of Mr. Canning, who extended the doctrine to steam vessels and yachts that might afterward be converted into vessels of war, and they appear quite consistent with the acknowledged law of nations." Now, my lords, this is not the mere statement of opinion of Mr. Huskisson. If it were, of course it would be entitled to respect, and nothing more. This is the statement of a public act done by a minister of this country in the administration of the affairs of this country and in the dealings between this country and foreign powers. This is a statement made by a person who had been a minister at the time of which he spoke, of a complaint which had been made by Turkey at the time when Lord Cochrane was engaged in one of those expeditions in which, in his early life, he was engaged. Turkey complained that that was being done. Turkey complained of the export of arms, and ships leaving the country, though not armed; and the answer stated by Mr. Huskisson to have been made by Mr. Canning is this: "It is only when the elements of armaments, are combined, that they come within the purview of the law, and if that combination does not take place until they have left this country, we have no right to interfere with them." Now, those clearly were cases where, if the doctrine now to be put forward had been considered to be the true exposition of this act of Parliament, there would have been a right to interfere on the part of the government, and we may presume that proceedings would have been taken to prosecute those ships.

My lords, so much for that, which is one of the instances which we have of the opinion of those who had, if they thought fit, to put in force this act of Parliament. I now come to two instances much more modern and coming close to the present time; I mean those cases which have been mentioned already in the course of this trial, and mentioned on the occasion of the moving of the rule before your lordships, namely, the cases of the *Oreto* and the *Alabama*. I will take leave to say, in the first place, that I hope my learned friends who appear here on the part of the Crown will not suppose that I am going to do anything so foolish as to frame any argument *ad hominem*, with reference to anything which they may have said or done upon the subject, from the circumstance that they now appear here as counsel for the Crown. I wish to speak of the cases of the *Oreto* and the *Alabama* as if those cases had occurred twenty years ago, and were simply matters of history; and if I refer to the words of individuals at all, I wish to refer to them merely as indicating the course of action which was taken with reference to those ships upon this act of Parliament. I desire to frame no other argument than that. The cases themselves have now become matters of history. We find the whole record of the proceedings with regard to them already printed in the new edition of Mr. Wheaton's book on International Law. The case of the *Oreto* was simply this. She was a ship built in Liverpool. She left Liverpool unarmed, and without any warlike equipments. She was afterward armed and equipped for warlike purposes, and became in the result a ship in the employment of one of the belligerent powers, the confederate government.

LORD CHIEF BARON. Where do those facts appear, so that the court can take judicial cognizance of them?

SIR HUGH CAIRNS. My lord, they appear in the evidence, in this case, of one of the witnesses whose evidence I shall have to refer to. One of the witnesses states that he was on board one of the ships himself, and he speaks of his knowledge with regard to the other.

MR. ATTORNEY GENERAL. If, my lords, it be material, (I do not know whether my learned friend will be pleased to hear it or not,) I may mention, though any judgment which may have been formed in those cases by the advisers of the Crown is utterly immaterial to your lordships as a matter of law, that the advisers of the Crown were of opinion that there was evidence to establish an intention.

SIR HUGH CAIRNS. My learned friend is now arguing the case.

MR. ATTORNEY GENERAL. You stated what you put as the facts.

SIR HUGH CAIRNS. I am stating the matter upon my own authority; if it is not supported by the evidence, or by materials to which I can legitimately refer, my learned friend will have an opportunity of controverting it; but my learned friend is now arguing the case.

MR. ATTORNEY GENERAL. My learned friend is stating what he calls a historical fact.

SIR HUGH CAIRNS. I object to my learned friend's interruption.

MR. ATTORNEY GENERAL. I object to the statement of what is not in the record for the purpose of this argument.

LORD CHIEF BARON. I must say that I have some doubt whether much light can be thrown upon the subject which we are discussing by anything which belongs to the *Oreto* or the *Alabama*.

SIR HUGH CAIRNS. I will state to your lordships exactly the view which I wish to present of those cases, and the use which I desire to make of them. Of course, if we had judicial decisions here to refer to upon the construction of the act of Parliament, they

would be that which we should look to first, and would probably be those matters by which your lordships would be guided. There are none; and it is, I apprehend, legitimate in the next place to look at the course which has been pursued by this country, and by those who have the direction of the executive of this country, with reference to cases *in pari conditione* with what is said to be the case now before your lordships. That seems to me to be a legitimate course to take, especially when you find that there has been an absence for such a length of time as forty years of cases analogous to the present under this act of Parliament. In that point of view I was about to refer to the cases of the *Oreto* and the *Alabama*; and if there be any dispute about the facts I desire to do no more than this—to take the statements made on behalf of those who were advising the Crown and acting for the Crown at the time when they were justifying their conduct, and the course which they pursued with regard to the *Oreto* and the *Alabama*. If it were necessary to refer to it, there is evidence with regard to those ships, but I do not desire to go into it if there be any dispute about it. I will take the statements of those to whose words I am going to refer. Now it is in that point of view that I observe first upon the case of the *Oreto*. This is the statement which I find made in Parliament by one of the advisers of the Crown with regard to the *Oreto*, and it will be a statement, I think, bearing directly upon the view taken of the construction of the act of Parliament. “The *Oreto*,” says the solicitor general, in Parliament, upon the 11th of March of this year, “was made the subject of due representation only once before she left this country, because she sailed from Liverpool on the 22d of March, clandestinely, as did the *Alabama*; and it was only on that same day that a conversation took place between Mr. Adams and Lord Russell, which might have led to her detention if she had not gone. On the 18th of February the first and only previous information communicated to our government was given by Mr. Adams; he stated a case which clearly called for inquiry. Accordingly, the commissioners of customs were directed to make an inquiry; they did so, and on the 22d of February they reported that circumstances worthy of credit tended to show that the *Oreto* was going, or at all events was credibly represented to be going, to Italy, and not to America, and not a particle of evidence had been offered to the contrary: she was not then fitted for the reception of guns, and had nothing on board but coals and ballast. There was, consequently, nothing to justify her detention—nothing but vague rumors and suspicions. No further representation was made, and the *Oreto* sailed on the 22d of March. What then happened? The circumstances of her departure, and the contemporaneous representation made by Mr. Adams to our government, made it probable that she was really intended for the Confederate States, and that our officers had been imposed upon. Still the case was not clear; there was nothing proved to have been done in England which a court of law would certainly have construed as a violation of the foreign enlistment act. Nevertheless, our government immediately sent orders to Nassau, where she was understood to have gone, and when she arrived there she was watched. Upon the appearance of a delivery of stores, which appeared to be munitions of war, into the *Oreto* while in our waters, though it was doubtful, and it was questionable whether the evidence would prove sufficient, still, to show our good faith, we strained a point, and acting upon this evidence, the *Oreto* was seized. What was the result? She was tried and acquitted.” Now my observation upon that is this: Here is a statement that the *Oreto* left Liverpool; that at the time she left Liverpool she had no warlike equipment on board, but of course, from the nature of the case, she was prepared and able to sail away from Liverpool. She came to Nassau; she was still within our jurisdiction. Before she came to Nassau it had become clear that she was not going to Italy, where she had been said to be going originally; the circumstances were supposed to be sufficiently clear to justify a case made that she was going to be employed by the confederate power. What is the course taken? Do they say “The mere fact that she was able to sail away from Liverpool, the mere fact that she had on board those appliances which would enable her to sail from the port of Liverpool, although she had no warlike equipment on board, will be enough, when coupled with the intent to be employed in a particular way of which we now have evidence?” Nothing of the sort. The gravamen of the charge is that she took in munitions of war while in the waters of Nassau. I desire to put it no further than it ought properly to be put. I say that that is clearly a statement that the view taken by those who took proceedings against the *Oreto* was, that short of something which could be called a warlike preparation they could not institute proceedings against the ship; that there was nothing which amounted to a warlike preparation until she came into the waters of Nassau; and it was in respect of that preparation that she was seized.

Now the case of the *Alabama* was dealt with at the same time, and the facts respecting it I am willing to take in the same way and upon the same statement.

MR. BARON BRAMWELL. Was the *Oreto* tried at Nassau?

SIR HUGH CAIRNS. Yes, my lord, and she was acquitted.

MR. BARON BRAMWELL. Before what court?

SIR HUGH CAIRNS. Before one of our courts there.

MR. ATTORNEY GENERAL. The admiralty court.

SIR HUGH CAIRNS. The vice-admiralty court.

MR. BARON BRAMWELL. Whatever it be worth, one would think that there must be some direction by the presiding judge there upon the matter.

SIR HUGH CAIRNS. Very possibly, my lord. She was tried and acquitted for want of evidence.

MR. BARON FIGOTT. There seems to have been a difficulty there in finding evidence of intent.

SIR HUGH CAIRNS. Yes, my lord; but the point which I am now submitting to the court is this. Of course the evidence of the intent was supposed to exist when she was tried at Nassau. There were two things to which of course the evidence would be directed; the one would be the acts done with regard to the ship—I mean as to her equipment; the other would be the intent with which those acts were done. I agree that it was supposed that there was no evidence of the intent till she got to Nassau; but then, assuming there was evidence of the intent, there were acts of equipment done at Liverpool which were sufficient, if anything short of a warlike equipment were sufficient; whereas it was supposed to be necessary to proceed against the ship, not for what was done upon her at Liverpool, but with regard to what was done at Nassau, namely, putting munitions of war on board.

Now with regard to the Alabama, I find in the same statement this: "Were our government wrong in not seizing the vessel? The circumstances disclosed in a case tried before Justice Story" (that is the case of the *Independencia*, to which I referred yesterday) "were so far exactly the same as those which occurred in the case of the *Alabama*."—

MR. ATTORNEY GENERAL. Will you read a little earlier?

SIR HUGH CAIRNS. I will read from the beginning of the paragraph: "On the 1st of July, the commissioners made their report to Lord Russell," (that is, the commissioners of customs;) "they said it was evident the ship was a ship of war. It was believed, and not denied, that she was built for a foreign government, but the builders would give no information about her destination, and the commissioners had no other reliable source of information upon that point. Were our government wrong in not seizing the vessel then? The circumstances disclosed in a case tried before Justice Story were so far exactly the same as those which occurred in the case of the *Alabama*; and in the absence of any further evidence the seizure of that ship would have been altogether unwarrantable by law. She might have been legitimately built for a foreign government, and though a ship of war she might have formed a legitimate article of merchandise even if meant for the Confederate States." I will now refer to page 26, where the subject was again taken up. "What is alleged against us? What is the extent of the acts committed even by individual subjects of this country which can be considered contrary to any law of our own? Why the building of these two particular ships," (the *Oreto* and the *Alabama*.) "If our law failed to reach them while they were within our jurisdiction, and if nothing was done by them in our ports or in our waters which was against international law, how can we be held responsible for their subsequent proceedings when on the high seas? It was not till the *Alabama* reached the Azores that she received her stores, her captain, or her papers, and that she hoisted the confederate flag. It is not true that she departed from the shores of this country as a ship armed for war." Now I do not understand language if that does not mean that the point of the case with regard to the *Alabama* was this, that although there might have been evidence (perhaps not conclusive, but still evidence sufficient to launch a case) as to the intent with which she left our shores, still there was that wanting which bore upon the other and equally essential part of the case. She did not leave our shores as an armed vessel, and more than that, she did not receive anything which could be called warlike equipment until she had reached the Azores.

But, my lords, the matter as regards a subject of history with reference to the *Alabama* is made plainer still, because, after this statement of the course pursued with regard to the *Alabama* was made, and before the seizure of the *Alexandra* took place, and when certainly the public mind was anxious to know what was the line of duty which subjects of this country should pursue upon matters of this sort, I find that the following statement was also made with regard to the *Alabama*. The prime minister, a fortnight after the statement which I have already read, said this. I refer to the one hundred and seventieth volume of the Parliamentary Debates, and to the debate of the 27th of March, 1863. "I have myself great doubts whether, if we had seized the *Alabama*, we should not have been liable to considerable damages. It is generally known that she sailed from this country unarmed, and not properly fitted out for war, and that she received her armament, equipment, and crew in a foreign port. Therefore, whatever suspicions we may have had (and they were well founded, as it afterward turned out) as to the intended destination of the vessel, her condition at that time would not have justified a seizure." Now the distinction is as clearly drawn as words can draw it, between the intended destination as to which there might be some suspicion, which would be matter of evidence, and that which was a fact, *patens ad oculos*.

namely, the condition of the ship; and here is a statement made by those who had considered the authority of an act of Parliament of this kind, that a ship not fitted out with a warlike equipment when she leaves this country, whatever our suspicions may be with respect to her destination, cannot be made the subject of seizure, because her condition is not such as is pointed at by the act of Parliament.

My lords, I cannot help taking notice here of a statement made when the rule was being moved for by the attorney general; it was my learned friend who referred to the case of the Alabama in this discussion. My learned friend said, according to the note which I have seen of the statement, that according to his judgment those who were engaged in the dispatch of the Alabama from this country had rendered themselves liable to the penalties of this act of Parliament.

MR. ATTORNEY GENERAL. I said so in the speech from which you have been reading.

SIR HUGH CAIRNS. I am not aware that any statement of that kind was made, but I shall be very happy to read it.

MR. ATTORNEY GENERAL. At page 19, "When the evidence was completed"—

SIR HUGH CAIRNS. I will read it. "The first opinion was not communicated to her Majesty's government. When the evidence was completed, it was laid before the honorable and learned gentleman, (he was not an officer of the Crown,) who, on the 23d, thought there was a case sufficient to warrant her detention. Upon that evidence the legal advisers of the government came to the same conclusion as the honorable and learned member." That is upon that evidence. What that evidence was I know not, but I have a statement with regard to the condition of the ship when she left the country, as it was mentioned in the passages which I have read—there was not a case to warrant her detention. But I desire now, in addition to what I have said, and in addition to what my learned friend has said, to advert to what he wishes me to remember, namely, that it was his opinion that there were grounds under this act of Parliament for proceeding with regard to the Alabama. Now I ask this question. The Alabama left the country and could not be detained. I want to know why proceedings were not taken? The criminal proceedings remained. Those engaged in the affair of the Alabama, so far as I know, never made any secret of it; they said, "We believed that we acted within the line of the law." I want to know why, within the twelve-month during which proceedings might have been taken after the Alabama left the country, proceedings were not taken; and I should apprehend that if there were really those grounds which are now stated, they would have been taken to vindicate the law. But as matter of history no such proceedings were taken. These, then, were the cases of two ships which left the country without warlike equipment, and, as I understand, (your lordships will judge,) the reason why no attempt was made to detain them was that there was an absence of that kind of equipment which would have justified their detention.

My lords, I will ask your lordships to apply (which I can do very shortly) the observations which I have made upon the construction of the act to the evidence in this case with respect to the condition of the ship. I do not mean the evidence as to the intent with which she was to be dispatched from the country, but the evidence as to the actual condition of the ship at the time of seizure. Now a distinction was made by the attorney general in moving for the new trial, with regard to the condition of the ship, between what my learned friend called her structure and what he called things superadded to her structure. That there may be no doubt about the view which was put forward, I will take leave to read one or two passages from what fell from my learned friend when moving for the rule. After giving to your lordships a statement of the evidence with regard to the building of the ship, the sort of wood she was built of, the strength of her timber, and so on, my learned friend continued thus: "All that I have hitherto said connects itself with the structure of the vessel; but then there was further evidence going to what I apprehend is, in the strictest and most appropriate sense, fitting, furnishing, and equipment, as distinguished from construction, namely, evidence as to the machinery, the engines, the boiler, and other things of that description, constituting part of the furniture of the vessel, thereby to enable her to go to sea, which were either actually on board or actively in progress at the time."

Then, again, considerably further on, at a later period, having referred again to the construction of the ship, her bulwarks and so on, my learned friend said, "But now we come to the fittings, furnishing, and equipments, distinct from the structure." Now as I understand it, to narrow the point as much as possible, a distinction is taken, in the observations of my learned friend, between what is called the hull, the structure, the scantling, the bulwarks, the strength with which the ship is built, the form which she receives from the builder's hands, and those other things which my learned friend mentioned, which virtually are these—the machinery, and certain things of which I shall say something more particularly, namely, the hammock nettings. Those are the matters to which my learned friend refers as distinguished from the structure, calling them equipment, fittings, and furnishing.

Now the evidence, my lords, upon the point is this: I have to refer to four witnesses, but I think that what they say upon each point is very concise, and will not detain us long.

Your lordships will find Mr. Morgan's evidence at page 19.* Of course, I do not propose to read it all. I will just read the passages which refer to what I have in view. About half way down page 19, the evidence runs thus: "When you seized the *Alexandra* what was going on at the time on board the ship; was she complete?—When I seized her, about the time of the seizure, the workmen were variously engaged on board her. Do you recollect whether they were preparing anything for the hammock nettings?—Yes; they were fitting the stanchions for the hammock nettings. Were there iron stanchions on board the ship, in the hold?—They were fitted in their places. Do you recollect whether the masts were up?—All three of them. Were there any lightning conductors upon them?—There were lightning conductors upon each mast. Did you make yourself acquainted with the tonnage of the ship?—Yes." Then he goes on to state what the tonnage was. Now that is what Mr. Morgan says.

Then the next witness, my lords, is Mr. Black. The part of his evidence that I wish to refer to is near the bottom of page 61: "Was she strongly built?—Yes. Of what wood?—Her frame was of British oak, and her planking, so far as I could see, was of teak. Is it thick?—Her frame is not extraordinarily strong, but the planking, both outside and inside, is stronger than is usual for vessels of that class to be classed at Lloyd's. How far apart were her beams?—Well, they averaged about two feet apart; some were more and some were less. Of what length?—The extreme beam of the ship was twenty-one and a half feet. Did you observe her hatchways?—Yes. What was the width of the hatchways?—They were not wider than from two feet to two and a half feet. Did you ever see a merchant vessel with a hatchway only two feet or two and a half feet wide?—No. Could a vessel with a hatchway of that width be used as a merchant vessel?—Not generally; not for bale goods or anything of that kind. You could not get the goods into her?—No. What could she do as a merchant vessel?—She might put in small packages of hardware. They could not get the ordinary merchandise put into a merchant vessel into such hatchways?—No. What is the ordinary width of the hatchway of a merchant vessel?—It would be of various sizes; from five to six or seven feet wide; there is no particular size. But you never heard of a merchant vessel with a hatchway of two feet or two and a half feet in width only?—No. What are its beams made of?—British oak; for the boiler space they are made of iron. Did you examine the bulwarks?—Yes. Did anything strike you with regard to the bulwarks; were they the bulwarks of a merchant vessel?—No. For what reason were they not?—From their extraordinary strength. Did you mark anything with respect to their height?—Their height is about two and a half feet. Is that high or low?—It might do with regard to height for a merchant vessel, but it is generally higher for a merchant vessel. But you say that the bulwarks were stronger than are used in a merchant vessel?—Yes. And likewise lower?—Yes. Now, what are the upper decks made of?—Pitched pine. Have you ever seen pitched pine used for the decks of any vessel except vessels of war?—No. You never have?—No, except they are between decks. Do you consider this vessel altogether unadapted to mercantile purposes?—It is not qualified for mercantile purposes. In your opinion, having examined her—" Then this question is objected to, and he is finally asked: "For what is she adapted?—She is adapted for war purposes. What is her appearance?—A very fine appearance; she looks a handsome piece of architecture, very fine lines, capable of great speed, according to the power of machinery." Then there are a few questions, on cross-examination, at the top of page 63,† which I will read: "Do they use pitch pine for the decks of war vessels; I understand you to say that pitch pine is not usually used for the decks of merchant vessels; is it used for the decks of war vessels?—I never saw it used for the decks of merchant vessels. Did you ever see it used for war vessels?—Yes. Is it usual to use it for the decks of war vessels?—Sometimes, but not often. But not often; in fact, it is not usual to use it for decks at all, is it? You say you first saw the *Alexandra* on the 21st March?—Yes." Then he is asked who told him to go on board, which I pass from; the date, however, will be material for another purpose; I ask your lordships to observe it now; on the 21st of March Black first saw the *Alexandra*, having been directed by certain American gentlemen to go on board.

My lords, Mr. Green, at page 102,‡ says what he saw. He says that he is a ship-builder. I should say that that is hardly accurate. He said at first that he was a ship-builder, but on cross-examination he said that he had not built a ship for twenty years; that he repaired ships; and he gave us a singular piece of information; he said that in his judgment no improvement whatever had taken place in the building of ships for the last twenty years, but that, on the contrary, we were going back; that ships were not so well built now as they were twenty years ago, and that all the changes which had taken place in their construction were not improvements, but deteriorations. That is a matter of opinion, and of course he is entitled to his opinion. In the middle of page 102, as to the bulwarks, he says: "The bulwarks to which I first alluded as being different from any other vessel but a ship of war were composed of very thick planks, three inches thick, inside and out. LORD CHIEF BARON. What was it?—It was teak. The QUEEN'S ADVOCATE. What was the thickness?—The inside and the outside planks

* See page 11.

† See page 35.

‡ See page 57.

were three inches thick in the lower part, and two and a half inches thick in the upper part, and they were about two and half feet deep. That would be from the deck to the top. Do I understand from you that that is an unusual thickness for a merchant vessel?—Yes. Had she any masts?—She had three masts. Had she a propeller?—Yes; her propeller was under water. What were her dimensions? Then he gives the length and breadth, and the tonnage. "Did you observe her rudder?—The rudder was very strong, and a very thick formed rudder; unusually so. Was it thicker and stronger than would be used for a merchant vessel?—It was. You have spoken of the bulwarks; did you observe anything about the bulwarks—any arrangements made for the upper part of the bulwarks to be fitted up with anything?—I discovered several iron stanchions for hammock racks, which were not put up; but there were arrangements being made for the staples to receive them. They were on board, but there were staples in the side of the vessel to receive them." I think that that is a mistake. I think it should be, "They were not on board."

MR. ATTORNEY GENERAL. No, "they were on board."

THE QUEEN'S ADVOCATE. But they were not put up.

SIR HUGH CAIRNS. That may be so. I do not know that it is very material; but I should have thought from the "but" that it should run "they were not on board."

THE QUEEN'S ADVOCATE. No; I think that they were on board, but were not put up. I examined the witness, and I think that that was so.

SIR HUGH CAIRNS. I have no recollection of it, but I should have thought, from the collocation of the sentence, that the "not" was left out. "What, in your judgment, were the hammock-racks for?—For hammocks. Is that usual on board a merchant ship?—Very seldom. Did you observe the arrangement of the deck; was there anything peculiar?—The scuttles or hatchways were not suited for a merchant vessel. Would you tell his lordship were they, or were they not, of the same kind as you would find on board a man-of-war?—Yes; quite so. They were of the same kind?—As a small class man-of-war. Did you observe the engines and the boilers?—No; they were only partially up. Did you observe whether there was any particular space before the boilers?—Yes. What was that?—I could not say what that would be appropriated for; there was an entrance to it by a narrow scuttle, not sufficiently large for a hatchway; it would suit a narrow staircase. Was this particular space before the boiler usual in merchant vessels?—Yes; in merchant vessels built for cargo. Was it fitted for carrying cargo?—No; because there was no hatchway, there was only a narrow scuttle. It was not fitted for carrying cargo because there was no hatchway?—No; it was only what might be termed a narrow scuttle, which does not come under the denomination of a hatchway. Did you observe the forecabin?—I observed that it was not fitted as a merchant's forecabin, but as I have seen yachts and small vessels of war. Let me ask you, did you observe a cooking apparatus?—Yes; there was a cooking apparatus in the forecabin sufficient for one hundred and fifty or two hundred people. Was that the kind of cooking apparatus which is usual on board merchant vessels?—Only on board of passenger vessels; merchant vessels, which are passenger vessels, have as large, and larger, cooking apparatus, or ships which go on long voyages have as large. But a common merchantman would not have so large an apparatus?—No; not a small vessel like that. Did you observe the cabin?—Yes, I did; so much as was put up of it. Was there anything peculiar in it?—Yes; there appeared to me to be two compartments, which would either be fitted for pantries; but they were larger than pantries are, as I have seen pursers' or officers' cabins, and also the cabins of medical officers, fitted. As you have seen pursers' and medical officers' cabins fitted?—Yes; somewhat similar in their fittings. What did you find on the starboard side of the cabin?—There were two sleeping berths, each with a bed-place, and drawers under the bed place. You found two sleeping-rooms on the starboard side?—Yes; they are sometimes called rooms, and sometimes berths. With beds and drawers underneath the beds, you say?—Yes; drawers underneath the beds. Was there a third room?—There was a third room, but it was not appropriated; I cannot say what it was. But there was a third room?—There was a small room fitted as a pantry, which I might represent as being at the foot of the entrance of the cabin. Was that the one you spoke of just now, or another one?—No. You have spoken as to the starboard side, now tell me as to the port side.—I think there was one cabin with one bed-place on the port side. What sort of a room was that?—The bed-room was similar to the one on the starboard side. What kind of a room did it appear to be destined for?—There was a room before the bed-room, which did not appear to be appropriated; I could not say what that was intended for. Was there an after cabin?—Yes; a small after cabin. How large was that?—Nine or ten feet; I am not sure about the exact size. Did you observe the deck beams?—They were closer together than is usually required in merchant vessels."

Then I find that, just at the bottom of the page, after passing over some argument which took place, the Queen's advocate says: "I will state the question first to your lordship. The witness need not answer it. But I was about to put this question: 'Was she, in your judgment, adapted for a merchant ship, or for a vessel of war?'"

The Lord Chief Baron says: "Or for a yacht? The QUEEN'S ADVOCATE. Yes, my lord; or for a yacht. LORD CHIEF BARON. The non-adaptation to a merchant vessel I have already." Then I think nothing further proceeded in the direct examination; but in the cross-examination, at page 106,* your lordships will see, about twelve lines down: "According to your experience in yachts, are the hammocks occasionally put up on these hammock racks?" He says: "Very rarely." "Do they ever do so?" He says: "I have known large sailing vessels fitted up somewhat similar. And fitted with conveniences for putting the hammocks on the bulwarks?—Yes. The sole object of that is for the purpose of greater cleanliness among the men?—Yes. And for having the hammocks put from below to air them?—Yes; and there is another object. Their original intention was to resist shot; that was their original intention. The object, when it is used in a yacht, is for the purpose of airing the hammocks of the men, is it not?—Yes." Then he says that the vessel was unfinished below.

Then, my lords, there is Captain Inglefield, who, at page 58,† about half way down the page, is asked: "Of what timber is she built?—Principally of teak; her upper works are of other material; the kind of wood I cannot exactly say, but I should call her a strongly-built vessel, certainly not intended for mercantile purposes; but she might be used, and is easily convertible into a man-of-war. And speaking of the strength of the vessel, is she, in your judgment, of such strength as would be adapted to her being used as a man-of-war?—She is. Did you find whether she had an accommodation for men and officers, such as would have to serve on board a man-of-war?—She has. And as regards stowage room and the building of the vessel, what say you to that?—As regards stowage room, she has only stowage room sufficient for the crew, considering the berthing of the crew to be for about thirty-two men. And as regards her build generally, is it your opinion that she is adapted for a man-of-war?—She is quite capable of being converted into a man-of-war without having, at the time I saw her, any appearance of fittings for guns. You say that there were no guns, or immediate preparations for guns?—There were none. But having regard to the building of the vessel, might she or not, in your opinion, be fitted for guns?" Then the Lord Chief Baron says: "He has said that already, that she is. He said that she might be used as a yacht, and easily converted into a vessel of war. The ATTORNEY GENERAL. I wish particularly to call his attention to her fittings to receive guns. The LORD CHIEF BARON. He has already said that she is easily to be converted into a man-of-war. The ATTORNEY GENERAL. Including her adaptation to receive guns?—She is of sufficient length to receive guns, but without any of those appurtenances which would indicate that guns were about to be put on board. Would you tell us to what you refer, Captain Inglefield, in speaking of the appurtenances which indicate an absolute intention of putting guns on board?—Ring-bolts at the side, and plates on the decks upon which pivot guns would turn. SIR HUGH CAIRNS. There were none of those. The ATTORNEY GENERAL. No; he says there were none, and I ask him what were the appurtenances. Would there be any difficulty, in your judgment, in adding to the ship as she is now those preparations for guns?—No difficulty. The LORD CHIEF BARON. Not only no difficulty, but it could be easily done?—Easily converted into a man-of-war. The ATTORNEY GENERAL. When you speak of a pivot on the deck, do you speak of three guns or of several guns?—She might have two or three pivot guns. Would she, according to the ordinary arrangement now-a-days of men-of-war of her size, probably carry two or three guns or more on pivot?—Probably three guns. Would those, according to the ordinary course in these matters, be guns varying in size, or guns of the same size?—Of varying size. Supposing there were guns according to the ordinary course in such arrangements, would the smaller guns or the greater predominate in number?—I could only tell what guns would be fitted to the vessel by knowing what size was intended to be put on board; if they were smaller guns, they must have ports; but if guns of certain dimensions, they would be pivot guns, and would fire over the bulwarks. Without ports?—Without ports. I suppose if it were intended that they should fire over the bulwarks, the bulwarks would be constructed comparatively low, would they not?—Yes; they would. How did you find the bulwarks in this ship?—Low, but not similar to the bulwarks of gunboats in our service. Over which they were to be fired?—Of certain dimensions. The LORD CHIEF BARON. Those were low, but not low enough, according to our service, was I think, your answer?—Not the same description as those in our service; they would be flying bulwarks. The ATTORNEY GENERAL. But would there be any difficulty, without proper gun-carriages, in firing guns over those bulwarks?—It would be entirely dependent on the size of the gun. But with a proper adaptation of the size of the guns it might be done?—Certainly. About what height, so far as you recollect, of gun-carriage would be required to enable the gunners to fire over those bulwarks?—The gun-carriage and slides in different kinds of guns vary very much in size; therefore, I must know the kind of gun to be able to judge of the height or size of the carriage. It would depend on the kind of gun?—Yes. But with certain kinds of guns it might be done?—Perfectly."

* See page 59.

† See page 33.

Then he is cross-examined: "On what calculation do you arrive at the conclusion that this vessel would have accommodation for thirty-two in the crew? Is that upon the usual navy allowance of room?—Yes. The length of her in the lower decks was thirty feet by fifteen, giving nine inches for each man; that would stow thirty-two men. You only give nine inches for each man in the navy?—Nine inches only. That is rather close quarters, is it not?—Yes; rather. You say that the vessel was fitted for a yacht, and is easily convertible to a vessel of war; she could be used, I suppose, for mercantile purposes, not merely for a yacht, but she was capable of being used for mercantile purposes?—No; she was not capable of being used for mercantile purposes, because she had no stowage for merchandise. What state were her cabins in when you saw her?—They were not finished, but they were all laid out and bulkheaded off; besides the accommodation for men, there were cabins for five officers, a captain's cabin, and a mess-place. Were the cabins fitted up, or did you merely see the partitions between them?—They were partly fitted up; sufficiently to distinguish them as cabins. What was the difference between the cabins you saw and the sort of cabins that might be found in a yacht, supposing she was to be used for that purpose?—No difference."

Now that is the whole of the evidence, I believe, with regard to the condition of the vessel at the time of the seizure.

MR. BARON CHANNELL. Captain Inglefield speaks as regards stowage room; he says that there is only stowage room sufficient for the crew, considering the crew to be about thirty-two men; that is to say, if the vessel were manned with thirty-two men there would be stowage-room enough for that number of crew.

MR. BARON PIGOTT. She had no stowage for merchandise.

MR. BARON CHANNELL. He speaks in another part of the berths, or fittings, being sufficient for a great number; much larger than thirty-two. He also says, that there is a small quantity of stowage room; and either this or another witness says, a very small hatchway; but then he says, that there is stowage room for a crew which would consist of about thirty-two men; that is as I understand it.

SIR HUGH CAIRNS. If the crew were there they would take up that space; if they were not there it might be a question of occupying the space in some other way. When your lordship speaks of the hatchway, the other witness to whom your lordship has referred said that light hardware might be put in, but not the ordinary bulky goods of merchandise; and Captain Inglefield said very fairly with regard to the cabins, that of course looking at a yacht, where there would be a very large crew as compared with a merchant vessel, the cabins and accommodation of that kind for men were just the same as and in no way different from the accommodation which you would require on board a yacht.

Now, my lords, the question seems to me, upon this point, to resolve itself into extremely simple elements. Of course we must apply the facts of the case to the construction of the act of Parliament, upon which I have made the observations which I had to make to your lordships, and I now refer to those observations for the purposes of applying the evidence. With regard to the structure, the strength of the bulwarks, and the sort of timber, be it teak or anything else, I apprehend that if I am right in saying that the building of any kind of vessel is not within the act of Parliament, that is a matter which we need not go into with regard to the question whether her condition is an offense against the act of Parliament. It may be proper, if you like to look at it upon the question of intent; that is a wholly different matter; it may be proper there to consider whether she had or not the appearance of a vessel which could be used for war; but upon the first part of the case, namely, the question whether there is the equipping, fitting out, furnishing, or arming, pointed at by the act of Parliament, I apprehend that the structure of the hull is irrelevant, and that we may put it altogether aside. Then over and above that, what we have to consider with regard to the ship is this: There is here no suggestion that there was anything in preparation which was not on board, except it may be (which I am willing to allow) any part of the machinery which may have been required to complete the whole machinery of the ship. It probably is to be taken upon this evidence, that the machinery was not entirely on board; but a very great part of it was on board, and I will even argue the case as if the whole had been on board. There is the machinery, there are the hammock nettings, and, if you like to add them, the masts.

Now, in the first place, I should take leave to submit to your lordships that it is not the case that any of those things are equipments of any sort. Those I apprehend are really part of the ship as a whole ship—part of the ship as distinguished from other things which might be added to the ship afterward. The machinery in a ship which is to be propelled by steam is of course a part of the ship without which she can have no existence as a steamship. So also with regard to the masts; so also with regard to things like the stanchions to receive the hammock nettings, which, according to the evidence of Mr. Green himself, are things which in their original invention no doubt were put upon the sides of warlike vessels to resist shot, but which in their use at the present day, he says, are used on board merchant vessels, and are used on board yachts, for a purpose which is a very intelligible one, namely, for putting out the hammocks

to dry, and to air, and to be ventilated properly at the side of the ship. I should say, therefore, if it were necessary, that those are things which really are part of the structure of the ship. But it is not necessary for me to argue that here. I say with confidence (and it is sufficient for my purpose) that it is in vain to contend that any of those things were warlike equipments of the distinctive character which is meant when that term is used. It is absurd to suppose that the machinery of a ship to be propelled by steam power is warlike fittings of that ship; it is absurd to suppose that the masts of the ship are warlike equipments of the distinctive character which I mention. It is equally absurd to suppose that stanchions for hammock nettings are warlike equipments, when we find that, whatever may have been the reason for their original introduction, they are now used on board merchant vessels and on board yachts. At this stage of the case there is no suggestion of any other kind of addition to the ship, or of work done upon the ship, which could come under the head of "equipment" or "fitting out." I say, as to those things which are spoken of in this compendious form, that there is not one of them which could be properly described as a warlike equipment of any kind.

But then it was said that a case could be made out which would bring the work either done or about to be done to the ship within the act; that it could be shown that there were guns which were in course of preparation, and which were intended for the ship.

Mr. BARON FIGOTT. Before you pass to that, it may become very material whether the word "not" ought to be in the evidence or not, because that applies to the hammock nettings; the words are, "they were on board."

The QUEEN'S ADVOCATE. At what page is that, my lord?

Mr. BARON FIGOTT. Page 103.*

SIR HUGH CAIRNS. I do not know whether my lord has a note upon that matter

Mr. ATTORNEY GENERAL. There is no difference in the notes.

The QUEEN'S ADVOCATE. And my recollection is very strong upon the subject.

SIR HUGH CAIRNS. I do not at all suggest it from memory, but merely from the collection of the words used.

The QUEEN'S ADVOCATE. My recollection is that the witness said that they were on board, and not put up.

SIR HUGH CAIRNS. Perhaps I can save trouble on that point. The staples were there to receive the hammock stanchions. I should be very sorry to make a distinction between the staples and the stanchions to be put upon the staples. I should say, that the stanchions were there, which were to be received by the staples. Whether they were on board or not, there is clearly an indication of an intention to receive the hammock stanchions; the vessel was made to receive hammock stanchions, and I am quite content to deal with it on that footing.

Mr. BARON CHANNELL. The staples show the intention, whether the stanchions were on board or not.

SIR HUGH CAIRNS. Certainly, my lord, and I do not think it at all proper to make a distinction between the two.

My lords, I was going to refer to that which, of course, would have opened a very different case indeed if it had been susceptible of proof, and if it had been intended to be proved by any proper evidence, namely, that guns were being prepared which were intended to be put on board this vessel within her Majesty's dominions, or that guns were being prepared, as to which the just conclusion was, that they were intended to be put on board within the kingdom.

Now, your lordships will find the way in which the attorney general at the trial opened his case with regard to the guns. At page 15,† about ten lines from the bottom, the attorney general says: "You will also have evidence as to Captain Tessier, equally and under like circumstances, inspecting the progress of the Alexandria; you will have the fact that the machinery for the Alexandria was constructed in the foundry of Messrs. Fawcett, Preston and Company, and that one large gun and two small rifle swivel guns were also constructed in the foundry for the purpose of being placed in and forming part of the armament of the Alexandria." Now, my lords, the Crown thought that they were going to prove that, which I suppose they conceived was not a very unimportant part of the case upon which the Crown detained this vessel, and claimed the forfeiture—namely, that three guns were being constructed by Messrs. Fawcett, Preston and Company, for the purpose of being placed in and forming part of the armament of the Alexandria.

Now, the evidence upon this point was the evidence of three witnesses; and I will take leave to refer your lordships to them shortly. The first of them was Robinson, at page 40.‡ He is asked: "You are a joiner, living in Liverpool?—Yes. You were formerly in the employ of Messrs. Fawcett, Preston and Company?—I was. How long since is it that you have left?—I left about two months ago. Was it your business there to make gun-carriages?—Yes, that was my employment. LORD CHIEF BARON.—What are the names of your employers?—Messrs. Fawcett, Preston and Company. Mr.

* See page 37.

† See page 23.

‡ See page 22.

JONES.—Was it your business to make gun-carriages?—Sometimes. Do you remember making gun-carriages, or helping to make gun-carriages, for three guns in particular?—Yes. What were the guns that you were making gun-carriages for?—Pivot guns. How many, I mean?—Three. Was there one large gun?—I believe there was. And two other smaller guns?—Yes. There was also helping to make these gun-carriages, I believe, a man named Joseph Carter, was not there?—Yes, I knew a workman by that name. How long were you employed in making these gun-carriages?—I was variously employed, not constantly. "Then this is his cross-examination. He is asked: "Messrs. Fawcett, Preston and Company are very extensive engineers, are they not?—Yes. They make a great many steam-engines, do they not?—Yes. For steam-vessels?—Yes. They make a great many guns, do they not?—Sometimes. A good many in a year?—Yes. And have done so for many years, do you not know?—Yes." Then he says that he has been with them twenty-two months. "And I suppose you saw a good many guns made in that time?—Yes. And gun-carriages?—Yes." Then he states why it was he left them.

Up to that point, therefore, we have this fact, that these articles were made in an establishment which was proved *abundant* to be one of the most extensive in the kingdom, making hundreds of guns in the year, and steam-engines, and everything which can be done at an extensive manufactory.

THE QUEEN'S ADVOCATE. Was there any evidence of that?

SIR HUGH CAIRNS. Yes, which I will read at the proper time. I do not wish to mix it up with this evidence. In a manufactory of this kind, this witness says that three guns were made, and three gun-carriages made for those guns; that is all he says, and that a Mr. Hamilton looked at them.

Now, Carter, at page 41,* says that he is a joiner also at Liverpool; that he had been in the service of Messrs. Fawcett, Preston and Company, and had left their service; and about six questions down he is asked this: "For some time before you left, in April last, were your masters, Messrs. Fawcett, Preston and Company, making machinery for a propeller boat?—Yes. Was the boat for which the machinery was being prepared known in your workshop by a number?—Yes. What was the number?—2209." Then he was asked whether he had been on board the *Alexandra*, which does not relate to the guns, and I pass over page 42 and come to about fifteen lines down in page 43.† "Did you hear this vessel spoken of by any one of those gentlemen, or in the presence of any one of those gentlemen," (that is, the partners in the firm of Messrs. Fawcett, Preston and Company,) "by any description, except No. 2209?—No. While the machinery was being prepared, were you frequently at work in your business of a carpenter in the erecting shop?—Sometimes. Is that the shop where the machinery is prepared and fitted for the vessel?—Yes. While you were there did you ever see a gentleman of the name of Hamilton?—Yes, I have seen him there. Did you see him there frequently or seldom?—I have seen him there pretty often. When he was there, did you see whether he paid attention or did not pay attention to the machinery?—I could not say that he did particularly to any branch of it; I could not see that he did to that branch of the machinery more than to another. Besides that machinery which was being prepared for the No. 2209, was other machinery for vessels being prepared in the same room at the same time?—Yes. Do you remember while the machinery was in progress for the *Alexandra*, whether any gun or guns were prepared?—Yes, they were preparing some at the same time as she was in the building. I think you said some carriages just now?—Some carriages and guns were prepared at the same time. At the same time that the machinery was being prepared, as I understand you?—Yes. Was it any part of your business, and were you employed with regard to the gun-carriages and the slides for those guns?—I was working at them. You were working at the gun-carriages and slides?—Yes. You say that 2209 was the number by which the vessel was called?—Yes. Was there any number connected with the guns?—Yes, each gun had a separate number. LORD CHIEF BARON. Not 2209?—No. MR. ATTORNEY GENERAL. How many guns were there that you are speaking of?—Three. One large gun, was it?—Yes. And two small guns?—Yes. Were the small guns rifled or not?—Rifled. You say each had its number?—Yes. Was there a number on the gun-carriages and slides for the large gun?—There would be the same number as the guns;" that is to say, the slides would be the same number as the guns; "they would all go by the same number; each would go by its own number. Do you remember whether there was a number upon the gun-carriages and slides fitted for the large guns?—The same number upon the carriages as upon the guns. What was that number?—That I will not say; I will not be positive of the number. LORD CHIEF BARON. The number on the gun-carriage was the same as on the gun?—Yes; exactly. MR. ATTORNEY GENERAL. Do you remember any of the numbers or not?—As far as opinion went, I would not swear to the number. To the best of your recollection?—I think 2205 and 2204 were the numbers of the small guns; of the large one I would not say. Have you any recollection at all about the number of the large gun?—No. One way or the other?—No. As to the manufacture of the guns and gun-carriages, I think you said that it was

* See page 23.

† See page 24. Digitized by Google

going on at the same time as that of the machinery?—Yes.” Then a question arises as to a question put. Then he is asked: “Were they, as far as you could see, manufactured for use in the same vessel as the machinery or not?—That I could not say; they might be, or they might not be.” Then lower down the question is put: “Can you tell us about how high the larger gun, whatever its number may have been, would stand on the gun-carriage?—It would stand about four feet. And the smaller ones?—About three, I think. You told us that you knew Mr. Sillem, one of the partners?—Yes. Was he frequently in the shop of his own firm at the time when this machinery and the guns were going forward?—Yes. Did you notice whether he did or did not pay any particular attention to the guns?—They were generally there; he was the principal partner in that line. That is his line?—Yes. Have you seen from time to time Mr. Hamilton with Mr. Sillem in the shop?—Yes. I mean at this time when the machinery and the guns were in preparation?—Yes. Have you at any time or times heard Mr. Sillem speak of alterations, either in the screws of the gun-carriages, or other matters connected with the guns, in Mr. Hamilton’s presence?—I have heard him make the remark that he could make improvements in the compressor screws. You have heard Mr. Sillem say that to Mr. Hamilton?—Yes. That he could make improvements in the compressor screws?—That he had done so. What did Mr. Hamilton say upon that?—He thought it was a great improvement upon the old original one. He said that?—Yes. LORD CHIEF BARON. In the lock?—No, the compressor screws. MR. ATTORNEY GENERAL. You told us the small guns were rifled?—Yes. Do you remember about what time it was that the casting of the guns for the carriages was going on?—It was all going on together. At the same time that the rifling of the small guns was going forward?—Yes. As to the rammer and sponges for the guns, were those made in the same shop?—No. In the pattern shop?—Yes. That is another place, is it?—Yes. Were those gun-carriages of a common or of an unusual kind?—They were good ones. Were they of an ordinary description, or were they rather difficult to construct?—Rather difficult, I should say. Not a very ordinary or common description?—No. Do you remember what they were made of?—English elm. And of what were the slides made?—Teak wood. Did you happen to know where the teak wood for the slides was obtained?—Yes. Where?—At Mr. Miller’s. At Mr. Miller’s yard?—Yes. Did you see the gun-carriages finished?—No, they were not quite finished when I left. Had they or had they not been nearly finished for some time before you left?—Yes.”

Then on cross-examination, at page 47,* your lordships will see this: “Can you tell me when you left?—Three or four months since. These gentlemen carry on business as engineers and founders on a very large scale, do they not?—that is Messrs. Fawcett.—“Yes.” This is the evidence which I told your lordships would put you in possession of the character of their works: “I believe they have eight hundred or nine hundred workmen employed at a time on their premises?—I dare say, if you take both yards into consideration, there would be more than that. I believe they make all sorts of machinery?—Yes. Rice mills, cotton presses, and other things?—Yes, all sorts. And the hands generally are pretty full of work?—Always very busy since I have been there. I suppose your work as a joiner was carried on under one particular roof, was it not?—Yes. And the machinery was put in another place?—Yes. And there was one place where guns were bored?—They were bored in one place. And they are constantly boring guns, are they not; it is a part of their business to bore guns?—Yes. And if you go into the yard you generally find a quantity of guns, which are there ready for sale?—Oh, any sort you like. How long had you been in their employment before you left on this occasion?—About a year and eight months. Now, you said that the teak on which you worked came from Messrs. Miller’s yard?—Yes. They are dealers in timber, are they not?—Yes. Teak is the best wood for making slides, is it not?—I do not know. It is as good as any?—I suppose it is as good as any. Is it commonly employed for making slide of guns?—I cannot say; I never made any slides before I went there.”

So much, my lords, for Carter, as to whom it does not require argument to say that he proved nothing whatever except the fact that three guns were being made in a place where a great number of others were being made, and where guns of all sorts were getting ready for sale.

Hodgson, my lords, at page 48,† who is a warehouseman, is asked, “Were you for any length of time in the service of Fawcett, Preston and Company?—About a year and eight months. In what department of their works were you?—When I first was there I was put in the yard as a laborer, and after I had been there a short time I was put in the packing-room. Were you in the packing-room in the earlier part of this year?—Yes. And some time before?—Yes. When did you leave the service of Fawcett, Preston and Company?—About the same week as Carter left. Some time before you left were Fawcett and Company making any machinery for any particular ships?—Yes. What ships?—The Alexandra and the Phantom. Were they making guns?—SIR HUGH CAIRNS. Were you engaged about the machinery?—No; but it all had to come to the packing-room before it went out of the yard, or was sent there. The SOLICITOR GENERAL. Besides machinery, were they making guns?—Yes. And gun-carriages?—Yes.

* See page 26.

† See page 27.

And shot?—Shot. And shell?—Yes.” Then an objection is made to a question, and we pass on, with your lordship’s permission, to page 50,* about four lines down. “Who was in the habit of sending you over for that purpose?” that is, to see how far advanced goods were which had to be packed. “Mr. Bradshaw, who is in the packing-room along with me. He was employed with you?—Yes, he was employed in the packing-room. You said you or Mr. Bradshaw went or were sent over?—Yes. Who sent you over?—Mr. Bradshaw would send me or go himself. When you were sent, were you directed as to what you were to inquire for?—For such a number, 2209. You were to inquire for 2209?—Yes. For what things were you to inquire, identified by that number?—Everything belonging to the machinery.” Then about twelve lines lower down, the solicitor general says: “Were you sent for machinery for that number?—Yes. And for clenches and bolts?—Yes. You had to pack them?—I took them up myself. Did you take them to the ship?—Yes. And you know that they were for that ship by that number?—Yes. Did you ever hear that ship spoken of by any one of the partners in the office?—No, not by any one in the office.” Then, my lord, a question arises as to the form of examination, and we pass on to page 51,† about six lines down. The solicitor general says: “My question is this, my lord: Did Mr. Speers, who is stated to be the manager or foreman of Fawcett, Preston and Company’s works, give the witness any orders with respect to those things? SIR HUGH CAIRNS. What things? The SOLICITOR GENERAL. Machinery, clenches, and bolts. SIR HUGH CAIRNS. I have no objection to the question then, if that is all. The SOLICITOR GENERAL. Did he give you any orders?—Yes. What were the orders?—To see if the things were ready, and to take them, if they were ready, as the men were waiting for them in the yard. To take them where?—To take them up to Mr. Miller’s yard, or to the boat. Or to where?—To the gunboat. Those were the words of Mr. Speers?—As far as I remember. SIR HUGH CAIRNS. As far as you recollect?—Yes. The SOLICITOR GENERAL. Where did you take them, in consequence of that order?—I took them to the yard, and left them in the stores of Miller’s yard. What became of them afterward?—The men would be waiting to use them, when I got there. What ship was it?—The ship now called the Alexandra. Was the Alexandra in the stocks it ought to be, at that time?—Yes. You saw the things, in consequence of that order, taken to the Alexandra?—Yes; the men have been waiting for them, and when I have taken them they have said, ‘Are those for the gunboats?’ and I have said ‘Yes.’”

My lords, nothing occurs in that as to guns. At the bottom of page 51,‡ if your lordships will be good enough to turn to it, a question is asked about Mr. Hamilton; he was in the works. “Do you know a person of the name of Hamilton?—Yes. Did you ever see him there?—Yes. Whom was he with?—Sometimes alone, and sometimes with Mr. Sillem, and sometimes with Mr. Mann, but he was more often with Mr. Mann.” And then at the top of page 52 he is asked: “What did he come about?” That is objected to. “Do you recollect anything he said in their presence in the packing-room?” that is, in the presence of members of the firm of Fawcett, Preston and Company.—“No. Do you remember anything he ever did in their presence?—No, except examining the shot and shell. Did he talk to them about it?—Mr. Sillem and Mr. Hamilton were talking about it; I could not understand what they said. You did not hear what they said; they were talking, and they examined the shot and shell?—Yes. Did their conversation stop when you came near them?—No, I did not notice them stop their conversation.” The Crown, of course, had been under the impression that the witness was going to say that the conversation did stop. “Have you ever seen Mr. Hamilton at Miller’s yard?—I met him coming along the yard.” There is nothing about guns till we come down to the bottom of page 52. § “Do you recollect packing any of the guns that were made at that time?—No, not the large ones; I packed the small ones. How many guns were there for that job?—Intended for the boat, three.” That is objected to, and the solicitor general says: “You say you packed the two smaller guns; was that at the same time the machinery was being made for this boat?—Yes. Do you know what was done with them?—They were sent down to the Northwestern Railway station. Which station?—At Wapping. In Liverpool?—Yes. Were the carriages packed as well as the guns?—Yes. Were there a good many carriages?—Yes. How many?—Sixteen or seventeen.” Sixteen or seventeen gun-carriages, that is to say, of course, for the same number of guns. “Did you ever hear any one of the partners of the firm, or Mr. Speers, say for what ship those guns were intended?—No. LORD CHIEF BARON. I do not think that Speers would do, except in giving of some actual direction. The SOLICITOR GENERAL. My intention was to refer to what he said in giving orders as manager. However, the witness says, No. Is it within your knowledge how those packages were addressed?—They were marked O. A. and C. B. with a diamond, and numbered. To whom were they addressed?—To Captain Blakeley, Camden, London.” Therefore that was the result; these gun-carriages were sixteen or seventeen in number, including some particular three as to which it was the fancy of the Crown to ask this witness, and the last that was heard of them was that they were traced to the London and Northwestern Railway station, in Liverpool, directed to

* See page 22.

† See page 22, near the bottom.

‡ See page 22.

"Captain Blakeley, Camden, London." Of course it does not require me to argue that there is not in the whole of that which I have read, which I believe is every syllable with regard to the guns, anything like a scintilla of evidence that those guns were intended for the Alexandra. They were being made in a manufactory, I agree, at the same time as the machinery of the Alexandra was being made; but there is nothing whatever in the evidence which in any way connects them with the Alexandra, or shows any intention so to use them.

When that evidence was given, my lords, the attorney general's view of it in reply your lordships will find very fair; there can be no objection to it at all; it is at page 215.*

Mr. BARON BRAMWELL. What is your proposition now; is it that there was no evidence to go to the jury of a warlike equipment?

SIR HUGH CAIRNS. No, my lord; I am not applying for a new trial. The Crown moves for a new trial. I say that there was no evidence in point of fact which can be laid hold of on a rule for a new trial upon the ground of the verdict being against evidence, or against the weight of evidence. There was no evidence at all to connect these guns with the ship.

Mr. BARON BRAMWELL. Are we to understand that the claimants could be called as witnesses?

SIR HUGH CAIRNS. I do not know that they could not.

Mr. BARON BRAMWELL. I think they could.

SIR HUGH CAIRNS. I have no reason to suppose that they could not.

Mr. ATTORNEY GENERAL. No doubt they could.

Mr. BARON BRAMWELL. I am very glad to hear the attorney general say so.

Mr. ATTORNEY GENERAL. We have always supposed so.

Mr. BARON BRAMWELL. My impression is so, undoubtedly. There was an act of Parliament in the most comprehensive terms, enabling parties to be called as witnesses. There was a doubt whether it excepted criminal cases; there was a doubt whether it applied to informations in the exchequer for penalties. There was an express statute, saying that it should not so apply. It does not seem to me that that express statute affects this case. I think that the parties are admissible.

Mr. ATTORNEY GENERAL. When I said "no doubt," I only meant to say that we had never entertained a doubt in our own minds. I did not at all mean to say that there might not be ground for one.

Mr. BARON BRAMWELL. I meant that I am glad that it is matter which we shall not have to discuss in this case. Of course, when one is considering whether a verdict is against the weight of evidence, I cannot help thinking that, when the claimants might have been called to set the matter right upon their oaths, a very small quantity of evidence would be sufficient to justify the jury in finding against them. However, you are addressing yourself to the weight of evidence.

SIR HUGH CAIRNS. The case of the Crown here is, that they are moving for a new trial upon the ground that the jury have found against the evidence and against the weight of evidence, and therefore it becomes material for me to show your lordships what, in point of fact, that evidence was.

Mr. BARON BRAMWELL. No doubt; I only wanted to see whether at the present moment you were addressing yourself to this point, namely, that there was no evidence at all, or to the other question, that there was some.

SIR HUGH CAIRNS. I have no object in contending that there was no evidence to go to the jury. I have the verdict. I am meeting a rule obtained upon the ground that the verdict was against evidence.

Mr. BARON PIGOTT. I suppose that the attorney general observed to the jury upon the claimants not being called?

SIR HUGH CAIRNS. Certainly, my lord; it was a great part of the address, as I shall show your lordships by and by upon the other part of the case.

LORD CHIEF BARON. Do you remember what was the act which was passed to settle the doubt about the parties being called as witnesses?

Mr. KEMPLAY. The 17th and 18th Victoria, chapter 122; your lordship will find it all in the tenth volume of the Exchequer Reports, in the case of *The Attorney General vs. Radloff*.

Mr. BARON BRAMWELL. The fifteenth clause enacts that "the second section of the act of the fourteenth and fifteenth years of her present Majesty, chapter 99, shall not be deemed to apply to any prosecution, suit, or other proceeding in respect of any offense, or for the recovery of any penalties or forfeitures, under any law now in force or hereafter to be made relating to the customs or inland revenue."

LORD CHIEF BARON. With respect to the admissibility of witnesses, in the case of *The Attorney General vs. Radloff*, which was in this court, there was a difference of opinion. I thought that the witnesses were not admissible, and lord Wensleydale, who was then one of the barons of the exchequer, was of the same opinion. I rather think that my brother Martin and the late Baron Platt were of a different opinion. I find in the marginal note the following words: "This decision has become superfluous, the

legislature having adopted and enacted the construction of the Chief Baron and Baron Parke. See the 17th and 18th of Victoria, chapter 122, section 15." Then at the end of that is put the section: "The second section of the act of the 14th and 15th of Victoria shall not be deemed to apply to any suit or proceeding in respect of any offense, or for the recovery of any penalties, under any law relating to the customs or inland revenue." This proceeding is under the foreign enlistment act; this proceeding is instituted as if it were a case of inland revenue. You find at the end of the seventh section, which creates the forfeiture, a provision that every such ship shall be forfeited, and that it shall be lawful for the officers of customs and excise to make the seizure, and in the manner in which they are empowered to seize for breaches of revenue. "And that every such ship and vessel, with the tackle," and so on, "may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise." Now, whether the impediment as to calling witnesses, which is continued in respect of the customs and excise, applies also to a forfeiture like this, is not absolutely free from doubt; and I do not think it at all necessary to solve that doubt here. The learned attorney general at the trial assumed that the parties might be called, and I did not think it necessary to say anything about that, one way or the other.

SIR HUGH CAIRNS. No, my lord; the question certainly was not argued, and I do not desire to address any argument to your lordships upon it now.

LORD CHIEF BARON. The argument of the question arose entirely upon the law, and the attorney general had had no opportunity of being heard upon it.

SIR HUGH CAIRNS. None at all, my lord.

LORD CHIEF BARON. But I certainly should have some difficulty in saying that the proposition, either one way or the other, is wholly free from doubt; I will not say that there is much to be said on both sides, though there very often is; but I think that there is something to be said on both sides. On the one side it may be said that this proceeding for a forfeiture and in the manner of a forfeiture under the customs and excise laws would carry along with it that if the defendants may not be witnesses in the one case they shall not be witnesses in the other. On the other hand it may be said that, strictly speaking, the thirty-sixth section of the act of 18th and 19th Victoria, chapter 96, says that "the second section of the act of the fourteenth and fifteenth years of her present Majesty, chapter 99, shall not be deemed to apply to any prosecution, suit, or other proceeding in respect of any offense, or for the recovery of any penalty or forfeiture, under any law now in force, or hereafter to be made, relating to the customs or inland revenue." This is a proceeding for a forfeiture, and although the forfeiture is not under the law of the customs or excise, the proceeding is under the law of the customs and excise.

MR. ATTORNEY GENERAL. I do not know, my lord, that it is at all important, but perhaps your lordship would like to be informed that the act from which your lordship has been reading is repealed by a subsequent act, namely, the 20th and 21st of Victoria, chapter 62; and the fourteenth section of that act, which stands in its place, is in rather different words: "The several acts which declare and make competent and compellable a defendant to give evidence in any suit or proceeding to which he may be a party shall not be deemed to extend or apply to defendants in any suit or proceeding instituted under any act relating to the customs." That is the language.

LORD CHIEF BARON. Then you observe that the offense is certainly not under the excise laws, but the mode of proceeding is under those laws. I do not know whether I make myself intelligible. The offense is quite apart from the excise laws, but the mode of proceeding is according to the excise laws.

THE QUEEN'S ADVOCATE. The party is not a defendant, my lord.

SIR HUGH CAIRNS. I think, my lord, if it should become necessary, the matter will receive more consideration. At present it does not occur to me to submit any argument upon it to your lordships.

LORD CHIEF BARON. Mr. Attorney General, has this act of the 20th and 21st Victoria repealed the other?

MR. ATTORNEY GENERAL. I believe that it has, my lord; but I will not undertake to say that I have examined it so as to satisfy myself upon that subject. I am told so by a gentleman attending from the customs.

[After a short interval.]

MR. ATTORNEY GENERAL. I hope that your lordship will take it that it is not so clear that it repeals it at all. I was certainly informed so by a gentleman whom I have every reason to trust. I see there is a repealing section here, but it is of a former repealing act.*

* A question arose in the Court of Exchequer in Hilary term, 1854, on the admissibility of the defendant as a witness on his own behalf under 14 and 15 Vict., c. 99, secs. 2 and 3. It was the case of Attorney General vs. Otto Radloff, a customs prosecution, tried before the Lord Chief Baron Pollock, in which the defendant, being tendered as a witness, was, on objection taken, rejected. A rule for a new trial was granted on this point, and in Easter term the case was argued, when, the court being equally divided, no judgment, and the rule dropped. (10 Exchequer Reports, p. 84.) The question remaining in doubt.

SIR HUGH CAIRNS. That may be an argument for some other time. At present I desire to ask your lordships' attention to a very simple matter, namely, this matter about the guns; that is all I am dealing with at present.

LORD CHIEF BARON. I should have been very sorry if it had been necessary for me to lay down any rule upon the point. It may have been a matter for argument, but you took no objection, and there I left it. It appears to me that the statute is not repealed which you first referred to, and that the 20th and 21st of Victoria apply only to customs and not to excise at all. You, Mr. Attorney General, and I have something to learn and consider before the next revenue case comes before us. It is a matter about which it is certainly possible to say a great deal on both sides. I do not offer an opinion one way or the other. I should be sorry now to express an opinion without hearing the matter argued.

SIR HUGH CAIRNS. It will be time enough when the time comes to argue that question. It would appear to me certainly to be a very singular thing if in a case in which a misdemeanor is created—

LORD CHIEF BARON. I think it really arises in this way—the forfeiture here is not under the excise laws, but the proceeding to enforce the forfeiture is to be according to the proceedings of the excise laws in cases of forfeiture.

SIR HUGH CAIRNS. This proceeding is, as it were, carried into the excise acts, whatever they may say upon the subject. I was only going to say, though I am far from wishing to argue the question now, that it would be a very surprising thing if it should turn out that in a case where a misdemeanor is created, and where the proceeding for forfeiture, being a proceeding *in rem*, would be conclusive against all the world as to the facts which are necessary to found the proceeding *in rem*—that although in a case of mere misdemeanor no one would contend that the defendant would be examinable, yet that he would be examinable or compellable to be examined in a case of a proceeding *in rem*.

MR. BARON BRAMWELL. This is to be observed, that he is a volunteer to a certain extent here, whereas if indicted for a misdemeanor, he would not be; he need not come and make the claim.

SIR HUGH CAIRNS. Very true.

LORD CHIEF BARON. There may be a seizure of property to the amount of £10,000 or £20,000.

MR. BARON BRAMWELL. Undoubtedly, if he is indicted he cannot escape the consequence. I own I think that this is a matter of very considerable importance.

SIR HUGH CAIRNS. Your lordship's observation must be taken in connection with this, though it is quite true he is a volunteer, yet if the argument be correct that he is examinable, then the Crown could examine him whether he volunteered or not, and compel him to attend though his name was in the information.

MR. BARON BRAMWELL. That would follow. I own I think this is a matter of considerable consequence, because if there is any reasonable evidence to go to the jury, and the defendants by being called could clear it up and say, "This vessel was not for the Confederate States at all, or if it was, it was not to be armed or equipped for warlike purposes," that would make a short end of it. They not choosing to do so, the jury would be warranted in finding against them upon comparatively slender evidence. To my mind, it would have been much better to have done so, instead of defending themselves in the way they did, which was more like defending themselves against a case, the circumstances of which they were unwilling to aver to. Why should a British merchant come and defend himself in this way if he was not doing anything contrary to the law? Why should he not have come into court and stated what the actual facts were? That would have been the manly thing to do; and he not doing so, I think the jury would be warranted in finding against him on very little evidence.

SIR HUGH CAIRNS. Those observations, made before I had approached the consideration of the evidence upon the case as to intent, are very difficult for me to meet.

MR. BARON BRAMWELL. Not at all; because it may well be that when you come to look at the evidence you may find that there is none, or none such as to call upon the person to give an answer.

SIR HUGH CAIRNS. That is our case.

MR. BARON BRAMWELL. I do not prejudice the case against you; I only say if there was evidence, that would have been the becoming way, in my judgment, to have met it.

SIR HUGH CAIRNS. I have not yet approached the evidence or completed my statement upon it, or submitted what I have to submit, or stated the reason why, supposing those defendants were ever so examinable, in my judgment there was no case to call

It was suggested by the court that the point should be settled by legislative enactment, and in accordance with that suggestion the thirty-sixth section of the 18 and 19 Vic., c. 96, was introduced. The act of 14 and 15 Vict., c. 99, did not extend to Scotland; and a similar question having arisen there under the 15 and 16 Vict., c. 27, sec. 1, a corresponding amendment of the customs law was made by 20 and 21 Vict., c. 68, sec. 14, applicable to the several acts in force relating to the law of evidence, by which the defendant was in more express terms excluded from giving evidence in any customs suits or proceeding in which he might be a party. Both the amending sections remain unrevoked.

upon them to be examined. Upon the first part of the case with which alone I am now dealing, the case as to the guns, I wish your lordships to indulge me by allowing me to show what the conclusion was that was drawn by the attorney general himself as to the evidence upon the subject of the guns, which alone is the evidence which up to this point has been brought before your lordships upon the subject. The attorney general, at page 215,* said this: "Then my learned friend came to the matter of the guns. You would understand from the question put to the witness from the workshop of Messrs. Fawcett and Company, that it was supposed, at least, that some connection would be traced between the Alexandra and certain guns. Now, I am bound to admit that, strictly speaking, we failed in tracing that connection." I will read something more that followed, but at this point I ask your lordships, Could it be pretended for a moment, after that statement by the attorney general, or after a state of things which warranted that statement by the attorney general, that there was any necessity whatever for those against whom this accusation is brought offering themselves to be examined on the subject? There is the confession of the attorney general himself that they had failed to trace the connection, and he coupled that with an observation which I will give the Crown the benefit of. I will shorten what he says, though it runs through several pages. He says: "Although I am bound to admit that we have failed in proving the connection between the guns and the Alexandra, I have to set against that what I am now going to put to the jury." The attorney general proceeded to say: "It appeared in evidence that there had been certain drawings of either those guns or gun-carriages, and the Crown were of opinion that if those drawings were produced something might appear upon the face of them" (there is no evidence that anything would appear upon the face of them) "which would be material to the case." And then the attorney general said, being in ignorance of what had passed at the trial in his absence, that notice had been given to produce those, and Fawcett, Preston and Company had not produced them in answer to the notice. The attorney general was ignorant for the moment that, in the course of the examination, while he was out of court, Fawcett, Preston and Company had been called upon by notice to produce those drawings, and it was urged by council that no proper notice had been given to produce them, and it was so ruled that no proper notice had been given; and accordingly when, during this reply of the attorney general, I took leave to interrupt him and inform him of that, the result was this—at page 218† he continued his address to the jury in these words: "I must take it that we have not put ourselves in the position to insist on the production of this, and indeed if we had done so they still might have withheld it; and inasmuch as the witness had no recollection on the subject, we could not give any secondary evidence as it is called. You have it that no strict proper notice was given, and under the circumstance the drawings were not produced." The attorney general in effect said this: I admit that we have failed utterly in proving any connection between the guns and the Alexandra, but I wish you to consider, he said at first, that there was a document that might have been produced, but was not. The attorney general finally, very fairly, as everything he said and did upon the trial was fair, said, "I am bound to admit here that we had no right to call for the production of that document." And there it ended. That was a complete abandonment of everything upon the question of the guns, as if the attorney general had struck the count upon that subject out of the information. Therefore, my lords, I desire to take that matter by way of addition to the observations which I have to make upon the condition of the ship in other respects. I think I shall have your lordships' judgment that we may strike out of the case altogether all considerations on the subject of those guns; the matter will then rest upon the structure of the ship (which I have already addressed your lordships upon,) and the other matters, the machinery, the masts, and the hammock nettles. I have submitted all the observations which I had to make upon them.

That ends (and I regret it has not been in my power to do it more shortly) all that I have to say upon the branch of the case which relates to the condition of the ship and to the words of the statute, "equipping, fitting out, furnishing, and arming." I have now to deal with a branch of the case altogether separate, but which opens up, perhaps more than the first part of the case did, the question of the evidence relied upon by the Crown; I mean the part of the case as to the intent, the act of Parliament requiring, in order to constitute the offense, not only that there should be an equipping, fitting out, furnishing, and arming, but that that should be done with the intent that the ship should be employed by one belligerent power to cruise and commit hostilities against the other.

In coming to that part of the argument, your lordships will at once, I think, see that the question of intent is immaterial, if my view upon the first part of the case is correct. If the view which I present to your lordships upon the first part of the case is correct, namely, that there must be an equipment or an attempted equipment of a warlike character in fact, and that there was none such in this case, then the secondary question, namely, the use that was to be made of the ship as between one belligerent and another, would of course become utterly immaterial; it is only on the supposition that

* See page 120.

† See page 121, near the bottom.

the ship was in a condition to comply with the earlier part of the clause that we have to approach and consider this second question. Now, with regard, my lords, to the species of intent which is to be proved in a case of this description, we have a statement in one of the American authorities, which I am very willing to refer to, and very willing to be governed by; I mean in the case which I have already mentioned upon another point, Quincy's case, reported in the Appendix to this book, and the page I am now referring to is page 79.* Your lordships will find toward the top of page 79 the instruction which the court thought should, in Quincy's case, be given to the jury upon the question of intent: "We think these instructions ought to be given: The offense consists principally in the intention with which the preparations were made. These preparations, according to the very terms of the act, must be made within the limits of the United States, and it is equally necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States. And this must be a fixed intention, not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide. It is the material point on which the legality or criminality of the act must turn, and decides whether the adventure is of a commercial or warlike character." Now, the instructions were the second and third occurring immediately before that at the bottom of page 78, and they were the instructions asked on the part of the defendants: "That if the jury believe that when the Bolivar was fitted and equipped at Baltimore, the owner and equipper intended to go to the West Indies in search of funds, with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her, to go to the West Indies to endeavor to raise funds to prepare her for a cruise, then the defendant is not guilty. Or if the jury believe that when the Bolivar was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to employ her, the fulfillment of which wish depended on his ability to obtain funds in the West Indies for the purpose of arming and preparing her for the war, then the defendant is not guilty." The court thought that those instructions should be given with that comment upon them which I have read to your lordships.

My lords, in addition to that, I will show your lordships the view that was taken at the trial by the learned attorney general as to the character of the intent that was necessary in this case. Your lordships will find that at the close of his reply at page 226,† about sixteen lines from the top of the page, the attorney general says to the jury: "I ask you to give your conclusion in this case on the evidence, and I will state at once what I intended to have stated a little earlier, that so far I agree with my learned friend that the intent must be an intent of one or more having at the time, the means and opportunity of forwarding or furthering such intent by acts. I agree that anything else, called an intent, or that which would be called an intent in the mind of any person not of this description, must be treated properly as a mere wish, imagination, or desire. By 'intent,' undoubtedly the act means practical intent." My lord, that was more especially with regard to a question which arose in the course of the trial, as to whether the intent, even if proved to have been in the mind of any person, such as a workman or an agent, who had not himself the power of control over the ship, who had not the means of ordering her course or her employment himself, whether an intent of that kind would be sufficient, and, so far as I understand the words which I have read, we were agreed ultimately that the intent of a person of that kind would not be enough; it must be an intent entertained by some one who has the power to give effect to the intent, being a person having the ordering and control of the vessel. Well, my lord, that, I think, leads one to observe that it is of course almost upon the surface of a case of this kind that we should have a right to require the Crown, in alleging an intent of this sort, to state who it is who is said to have entertained, and to have harbored the intent. A great number of persons' names were mentioned, both in the information and in the course of the trial. There was the name of Mr. Miller, the ship-builder; there were the names of the firm of Fawcett, Preston and Company; there were the names of another firm which your lordships have heard of, Fraser, Trenholm and Company; and there were the names of certain other persons who did not belong to either of those firms, and we certainly did complain at the trial of the course which was taken by the Crown in this matter. We complained that the Crown in opening their case did not at all, to use a Scotch phrase, condescend upon any one or more of all those persons as the one who entertained, or the more than one who entertained this intent. The Crown simply said, we will show you a great deal of evidence of something done by one person, and a great deal of evidence of something done by another person, and it will be quite clear to you that some one intended to do that which we allege, and you may pick and choose and decide for yourselves among whom the intent existed.

It is on this part of the case that I desire to state to your lordships the grounds upon which we contend that this was a case in which it was in no way incumbent upon the claimants for whom I appear, even if they were examinable as witnesses, to tender

* See *United States v. John D. Quincy*, 6 Peters, pp. 445, 469. Ed. 1832.

† See page 196, line 9.

themselves for examination. My lords, if I were moving here for a new trial; if I were the party moving, and not the Crown; if I—having had a verdict passed against me, holding that the facts alleged against me in the information were proved—were moving for a new trial, and came before your lordships with a critical examination of the evidence that was given in the case, and said, This witness does not prove the case to demonstration, and that witness adds very little to what the first has said, and if, carefully weighing the words of the witnesses for the Crown, I said, now upon that evidence I call upon your lordships to say that the case was not proved, and that the jury ought to have returned a verdict against the claimants, I then could understand the court saying to me, Are you in a position to maintain an argument of that kind; would not it have been better for you, if there were any doubt about it, if the matter could have admitted of any doubt or argument, to have at once removed that doubt by putting the claimants into the box, and having them examined, and so removing the doubt? That would be an observation, the weight of which would naturally be felt; but when I am coming here to show cause against a rule obtained by the Crown, when I have received the verdict of the jury in my favor, when the Crown challenge that verdict, and say it is against the evidence, or against the weight of evidence, the Crown having had the opportunity of laying before the jury the whole of their views as to the claimants not having been examined as evidence in the case, then the case becomes altogether altered. The question then is, Are the Crown able to satisfy your lordships upon this evidence that it was impossible for the jury to have come to a proper conclusion in returning a verdict for the claimants, and that the jury ought to have come to a different conclusion? The jury having given a verdict as they did, knowing that the defendants were not examined, and having heard every observation that could be made upon that circumstance of their not being examined, is it to be said on the part of the Crown that the verdict is against evidence, and ought to be set aside by your lordships upon that ground? At the trial I maintained, and I take leave to say to your lordships, that where the Crown proceeds for a forfeiture, or in the case of a misdemeanor, no matter whether the defendants can be examined or not, it is the duty of the Crown to prove the case which it alleges. I do not say to prove it to demonstration in the way that a proposition of mathematics is proved, but in a way to commend itself to the mind of any reasonable man, and that it is not open to the Crown, in properly conducting a trial of the sort, to say, We will launch our case; we will show you that which is merely a scintilla of evidence to go to the jury; it is nothing like sufficient. We agree it is not anything like sufficient proof, but if you find that the defendants do not come forward and clear themselves of the charge we make against them, we call upon you to find a verdict for the Crown. I hope the day will never come when that course will receive sanction from any one sitting in your lordships' place of judgment, as I am satisfied that it would never receive sanction from any jury before whom such a case might be tried.

Now, in showing cause against a rule which asserts that the verdict is against the weight of evidence, I must state this to your lordships. We, at the trial, not only maintained that the evidence, as it was given, did not prove or approach to proof of the case of the Crown, but we challenged the credit and credibility of the witnesses examined upon the trial. Of course we may have done that without sufficient ground, or with sufficient ground. I say, and submit with confidence, that we did it upon ground that was amply sufficient. The witnesses examined upon the trial, upon this part of the case, are eight in number—five of them were workmen who were discharged from the works of Messrs. Miller and Messrs. Fawcett, Preston and Company. Of course that would not be conclusive against them. Two more of the eight were, beyond all dispute or controversy, spies and informers, and they were something more than spies and informers; they were persons who, in order to obtain their information, had affected to act as if they were assistants of, and sympathizers with, those from whom they were seeking their information. The eighth remaining witness was one described by my learned friend, the attorney general, here, as a very straightforward witness, whose evidence was not in any way shaken. He was a person whose evidence I will give your lordships in detail, and as to whom, I venture to say, we were entirely correct in imputing to him what we did: that his evidence was evidence which, upon the point upon which it was material, was utterly incredible.

Now, before I go into a reference to the evidence of those eight witnesses, I may state that there were some matters in the case which were beyond all dispute. In the first place, as regards the place where this ship, the *Alexandra*, was lying; as regards the work that was being done upon her, and as regards the work in preparation for her, the engines, and the adjuncts of the engines, in the works of Messrs. Fawcett, Preston and Company, there was this remarkable fact: the whole thing was perfectly open. The witnesses who had the charge of the yard where she was building said there was no particular pass required for any one to come in; any one was at liberty to come in who wished to see anything in the yard; there was no concealment practiced; the matter was open to the light of day. So also with regard to the works of Messrs. Fawcett, Preston and Company, we have it upon the evidence that persons wishing to see the

works were allowed to come in, and a great number of people were in the habit of coming in, and looking about and seeing everything that was going on. Of course the matter was still stronger when the ship was taken out of the yard of Messrs. Miller, and removed to Toxteth dock, one of the principal docks in Liverpool, where the work was continued upon her till she was ultimately seized; the whole thing was done in a public dock. And this fact is the more important when it is observed, as was perfectly clear upon the trial, that while this was being done, it was well known, publicly known, that exertions were being made to quarrel with the construction and preparation of ships, wherever those concerned for the United States government thought they could do it; that proceedings had been taken or threatened with regard to the other ships I have mentioned. And therefore it was perfectly notorious in the neighborhood where the ship was building, that any breach of the law would be made the subject of proceedings if it could properly and safely be done.

The persons as to whom I must ask your lordships to consider the evidence for the purpose of seeing who it is among them all that could be said to have harbored the illegal intent which is relied upon in this part of the case, are the following: There was, first, Mr. Miller, who was the builder and the owner of the dockyard; in the second place, I put the firm of Messrs. Fawcett, Preston and Company, which consisted of a number of members, and I will take them separately; in the third place there were a body of names whom I will take together, the firm of Messrs. Fraser, Trenholm and Company, and three gentlemen who were proved to be in communication with that firm, namely, Captain Bulloch, Mr. Tessier, and Mr. Hamilton.

Now, my lords, there is a considerable part of the evidence which I can entirely relieve your lordships of, because upon that there will be no controversy between my learned friends and myself. I agree that the evidence in this case showed that the firm of Fraser, Trenholm and Company were persons who had communications with and transacted business for that government which is called the Confederate States of America. The business they were proved to have transacted for the Confederate States of America was the business of bankers; they made disbursements upon their order, and the other three persons, whose names I have mentioned, Captain Bulloch, Mr. Tessier, and Mr. Hamilton, were proved to have had intercourse and communication from time to time with Messrs. Fraser, Trenholm and Company, chiefly upon those financial affairs of the Confederate States. Therefore, I do not propose to read any of the evidence as if there were a controversy upon that point; my proposition would be that that is entirely immaterial to the case that I have to present with regard to the vessel and those concerned with her. I deny that there was any kind of connection proved between Fraser, Trenholm and Company and the Alexandra, and that is the point to which we have to direct our attention.

My lord, I will take first, with your lordship's permission, the five workmen, whom I will call the discharged workmen from the works of Miller or of Fraser, Trenholm, and Company; and when I use the phrase "discharged workmen," I will state what I mean by the phrase. Some of them were discharged because they were said to have been drunk, although of course they contended it was entirely a mistake; others were discharged because they struck for higher wages; but the fact was, that they had been in the works and had left the works on those grounds; they were what we call discharged workmen. Acton was the first of those, and your lordships will find the part of his evidence that I refer to at page 21.* He says, just at the bottom of that page, that he had been employed by Miller and Sons. "How were you employed by them?—As a watchmen, night and day. When was that? When did you begin to be employed as night and day watchman?—Fifteen months ago; rather better; somewhere about that. When did you cease to be employed by them?—About six or eight weeks ago. When you were in Messrs. Miller's service, do you recollect the Alexandra being constructed? Yes. Built in their yard?—Yes." Then a question arose about the line of examination, which occupied a considerable time; and we pass on from page 22 to the resumption of the examination at page 32. At page 32,† rather more than half way down the page, he is asked, "Do you know the firm of Fawcett, Preston and Company?—Yes. Do you know any of the men whom they employ by sight?—No. Do you know a person of the name of Hamilton, a Mr. Hamilton?—I have seen him. Have you ever seen him in Messrs. Miller's yard?—I have. Have you ever seen him there during the course of the building of the vessel Alexandra?—Yes. Have you seen him there more than once?—Yes. Frequently?—Yes. You say, frequently?—Yes. Can you tell at all how often?—Yes; once a week, or twice a week. Did he take any notice of the Alexandra (I do not ask you what) when he came into the yard?—Yes, a little. Did anybody come with him?—Yes. On those occasions?—Yes. Do you know the name of that gentleman?—Bulloch, I believe. Did they ever look at the Alexandra together?—Yes. More than once?—Yes. Besides looking at her, did they do anything with respect to her?—No. I do not ask you what; did they give any orders respecting her?—Not that I am aware of. LORD CHIEF BARON. They did nothing but look at her; they gave no orders?—No. THE QUEEN'S ADVOCATE. Did you ever hear Mr. Hamilton speak to Mr. Miller upon the subject of the Alexandra?—I do not

* See page 12.

† See page 18.

ask what he said, but did you ever hear him?—Yes. Did you hear him do that more than once?—Yes, once at least. Did you ever hear this person of the name of Bulloch, that you have mentioned, speak to Mr. Miller?—Yes. Upon the subject of the *Alexandra*?—Yes. Do you know a Mr. Mann?—Yes, I do. What firm does he belong to?—Messrs. Fawcett, Preston and Company. Have you ever seen him on board the *Alexandra*?—I have. When?—At different times. While she was in course of construction?—Yes. Have you ever heard him give any orders respecting her?—No. Did you say you had seen him more than once?—Yes. How often do you think you have seen Mr. Miller on board the *Alexandra*?—It might be three or four times. That was while she was in course of building in the yard?—Yes. When he came did he stay a short or a long time when he was on board?—Perhaps he would be an hour or half an hour. On board the *Alexandra*?—To and fro. Did you ever see him go on board any other ship when he was there?—I do not recollect it. As to Mr. Bulloch and Mr. Hamilton, when they came to the yard, how did they get in?—Through the yard gate. Who let them in?—Myself, for one. LORD CHIEF BARON. You mean they got in exactly like other people?—Yes, just so. QUEEN'S ADVOCATE. Did they have an order, or did they come in like anybody else?—They had an order from one of us. Was that the order usually given to everybody, or was it a particular order?—No. What was it?—Generally an order for them to go through, that is all.—Was it the usual or a particular order?—Not a particular order. LORD CHIEF BARON. Had the order anything to do with the *Alexandra*?—Not that I am aware of. Was it merely to let them into the yard?—To come into the yard. THE QUEEN'S ADVOCATE. When Mr. Mann came, did you see him go on board the *Alexandra* in company with Mr. Bulloch or Mr. Hamilton at any time?—No.

In his cross-examination he is asked, "Let us understand what you were exactly; you were a watchman, were not you?—I was. You had nothing on earth to do with building ships?—No. I believe your duty was to stand at the gate?—Yes. And you continued that duty until you were discharged?—Yes. When did Mr. Miller discharge you?—I do not know. You have not the least notion when that was?—No. That you swear?—Yes. You are sure you were discharged?—Yes. You tell these gentlemen that you have not the least notion when?—No. When, not why, is my question?—On the Thursday perhaps it might be. Last Thursday, was it?—No. When was it that you were discharged from Messrs. Miller's?—I do not know. When was it done?—When I was leaving the office. How long ago?—That makes all the difference; perhaps six weeks. After you left them, what did you do?—Nothing at all. And you have been doing nothing ever since?—Yes, I have done something. What have you been doing since?—Driving a car."

Then I pass over the part of the examination which relates to his communication with a person named Barnes, and a detective officer, and at page 35* he is asked: "How many months were you there?" that is in the yard. "Twelve or fifteen months. A good many people come to the yard on business?—Yes. A great many in the course of the day?—Yes, they do. And your place was at the gate, not in the yard among the ships was it?—No. In the gate?—Generally. You say you believe that Mr. Bulloch came?—Yes. What do you know of Mr. Bulloch; did you ever see him; how do you know it was Mr. Bulloch, the person who came?—He is a little man. How do you know that it is Mr. Bulloch?—I do not know that it is he. It is easy to say Mr. Bulloch came there; how do you know it was Mr. Hamilton who came?—I saw him. How do you know him?—I know him perfectly well. How do you know him?—I know him. Did you ever speak to him in your life?—Yes. What did you say to him?—I do not know. You let him through the gate and out again, did you?—Yes. Is that what you know of him?—Yes. Is that all you know of him?—Not exactly. Did you ever speak to him except when letting him through the gate and out again?—I have at other times. When you went into their service as watchman, had you been in the police force?—I had. How long had you been out of the police force when you went as watchman?—I cannot say. Have you got the least notion?—No. Not the least?—No. Several years?—No. Several months?—Perhaps eighteen months, as near as I can state." In his re-examination he says, "You mentioned a person of the name of Bulloch; was he called Bulloch in your hearing whenever he was spoken of?—I cannot say. Did you ever hear him called by his name?—I do not know. Did persons give any name when they entered your master's building yard?—Yes. Did you take their names?—Sometimes they might and sometimes they might not. Sometimes the names were taken?—Yes, some of them. While you held your place, was any name given by this person, whose name you say was Bulloch? Mr. KARSLAKE. What do you mean by that? Mr. ATTORNEY GENERAL. Given by Mr. Bulloch?" The witness says no. "Am I to understand that Mr. Bulloch never did to you give a name?—No. Are you sure that he came with Mr. Hamilton?—I have seen him with Mr. Hamilton." He describes Mr. Bulloch as being a little man with dark whiskers and beard, and he says that he cannot speak to his dress.

As to the matter about Bulloch, though it is a small part of the case, it is singular, that having called this witness Acton, who said that he could not speak from any knowledge as to his name being Bulloch, but describing the appearance of the person

* See page 12.

called Bulloch, they at a later stage of the trial produced a gentleman called Clarence Randolph Yonge, who was perfectly familiar with Bulloch, who was not asked the question at all what was Bulloch's appearance, even if that were a satisfactory way of identifying the person spoken of. The question was not put to him in any shape or form. But Acton is not done with, because your lordships will find that he was recalled at page 113,* there having been considerable controversy in the meantime as to whether Acton could be asked if he heard Mr. Miller say anything as to the destination of the Alexandra, or as to the character of the ship.

With regard to her destination, he is recalled at page 113, and the attorney general asks him: "You told us yesterday that you were employed in the building yard of Mr. Miller, of Liverpool, while the Alexandra was being built or was on the stocks?—Yes. During the time you were there, did you ever hear the elder Mr. Miller speak of the Alexandra, or describe her as a vessel of any particular class or kind?"—He said "No." The Crown thought he was going to give an important statement, but it turned out that he had never heard anything of the sort. I must anticipate what your lordships will find in another witness's evidence, in order to explain what is stated by Acton. Your lordships will find that, side by side with the Alexandra, there was being built a steam vessel called the Phantom, which was being built for the Confederate States; I have not the least idea what particular employment she was to be used in; but no person suggested that there was any illegality about her. She was built as a common ship, and no one suggested that there was any illegality in her building. If it be true that Mr. Hamilton was a person engaging himself in and occupying himself about business connected with the Confederate States, of course nothing could be more natural than that he should go into that yard, where a boat like the Phantom was building side by side with the Alexandra, and look about and see both vessels; but all that Mr. Acton could say was, that he had seen Mr. Hamilton, and that he had seen the person he called Mr. Bulloch, and that they walked about the yard and looked at the vessels building. That is the whole of the evidence so far as Acton is concerned.

MR. BARON BRAMWELL. Are you contending now that there was no sufficient evidence—I mean no strong evidence, that the vessel was intended for the Confederate States at all, armed or unarmed.

SIR HUGH CAIRNS. I am contending that the verdict was not against evidence, supposing the verdict to have proceeded upon that ground.

MR. BARON BRAMWELL. Suppose the jury said, in their own minds, Well, we think she is meant to be armed or equipped for warlike purposes, but we are not satisfied that she is intended for the confederates. You say that that would not have been a verdict against evidence?

SIR HUGH CAIRNS. Yes; we cannot tell what was passing in the minds of the jury; they might have proceeded in their own minds, either upon the first ground, or the second, or both; they might have virtually found for the claimants, that the ship was neither equipped nor intended to be equipped in a warlike manner; they might have found for the claimants, that she was not intended to be used in the service of the Confederate States, to cruise or commit hostilities against the United States; they might have determined either or both those things in favor of the claimants, but we are challenged by this rule virtually to meet the Crown on both parts of the case.

Now, Barnes, whose evidence is at page 36,† is the second of those workmen. He also is a workman who had ceased to be in Messrs. Miller's employment. He is asked, "When did you go into Miller's employment?" He says, "It is turned four years since first I went into their employment." He says he left them nearly three months ago; that he got a sup of drink and went away from his work. He says that he recollects a ship called the Oreto; that she was built by Messrs. Miller. He is asked, "How long ago is that?"—I think it would be about sixteen months since she went away. Was she launched about sixteen months ago?—Yes, I think so; I am not exactly sure." He says that he recollects two gunboats, called the Penguin and the Steady, being built in Messrs. Miller's yard. Then he says that was about three years ago. Then he says, "At dinner time and breakfast time I used to go about and have a look at them. I used to go on board sometimes."

MR. BARON PIGOTT. Are we to understand that you are contending that there was evidence to justify the verdict in either view of your argument as to the meaning of the seventh section of the act?

SIR HUGH CAIRNS. Quite so, my lord.

MR. BARON BRAMWELL. As I understand further, (I do not know whether it is so,) you say, that if the jury had turned round and said (supposing they had given, or had been obliged to give, a reason for their verdict) that they found for the claimants on the ground that they were not satisfied that this vessel was for the confederates at all, it would not have been a verdict against evidence.

SIR HUGH CAIRNS. Just so.

LORD CHIEF BARON. It is open to you to make that contention, but I never, that I am aware of, raised the question in my summing up, that it was intended for the Con-

* See page 63.

† See page 30.

federate States. I think you will find, in the way I put it, that there was nothing at all in any way pointing to that.

MR. ATTORNEY GENERAL. That is so, my lord; and it is one of the grounds of our present rule.

LORD CHIEF BARON. I did not raise the question as not being material. The point I put to the jury was this: Do you believe that there was any intention of doing the act quite apart from the intent? Was there an intention to do that, a commencement of that which, when perfected, would be either a fitting or furnishing or equipping or arming of the vessel—no matter with what intent—to go against anybody? Would it be, in that condition, so as to be (taking a reasonable view of it) within the meaning of the words—equipped, or fitted out, or furnished, or armed? Because, if it were so, it is a matter of perfect indifference whether it was for the Confederate States or not.

SIR HUGH CAIRNS. Quite so. I took leave to say, in approaching the second part of the case, that it became altogether immaterial if we were right upon the first part of the case. But we certainly conducted the case at the trial upon the assumption that we might succeed upon both parts of the case if necessary, or upon either part of the case. And it is with that view, I being in this difficulty, that of course we have not the slightest idea of what case the Crown may make when they come to be heard before your lordships now upon the rule which they have obtained, which alleges that the verdict is against evidence, that I desire to ask your lordships to consider how the evidence stands upon this point. I will take leave afterward to apply it, so far as is in my power, to the charge of the learned chief baron.

MR. BARON BRAMWELL. I take it that your opponents, in order to entitle themselves to a new trial on the ground that the verdict was against evidence, must show that it was against evidence upon every one of the points necessary for them to establish.

SIR HUGH CAIRNS. So I should expect. That is a question wholly distinct from the ruling of the lord chief baron. They must, in order to maintain that the verdict was against evidence, assume that the direction was correct, because otherwise there would be no occasion to go upon this ground at all, and therefore it was that I was endeavoring to pursue the line which I am glad to find your lordship thinks the correct one.

MR. BARON BRAMWELL. Let me see if I appreciate this rightly. Do I rightly understand you to say that there must have been an intent on the part of the builder that the vessel should be armed and used?

SIR HUGH CAIRNS. By the one belligerent to cruise against the other?

MR. BARON BRAMWELL. Yes.

SIR HUGH CAIRNS. No, my lord, I should rather say the contrary. What I took leave to submit to your lordships with reference to this part of the case was this: following the words of the late attorney general, that the intent must be a practical intent, that is to say, an intent entertained by some person who has the power to put that intent into execution, and then applying that to your lordship's question as to the case of a builder, I take it to be clear that if I order a builder to build a ship for me, what he may intend about that ship has nothing to say to the question—he is not a person who can entertain a practical intent within the meaning of that definition.

MR. BARON BRAMWELL. I will tell you what is in my mind. I only want to see what your understanding about it is. Supposing a man gives an order to a builder to build a ship, and says, All I require is that you should build her, fit her, equip her, arm her, and deliver her to me; the builder would say, I had no other intent than to build the ship and make a profit on the transaction; that was my intent. But suppose it manifestly appears that the person who gave the order, and who got the vessel, intended directly to use her to cruise and commit hostilities against some person within the act of Parliament, would you say the ship could be seized or not before she was completed, and before any property passed from the builder to the purchaser?

SIR HUGH CAIRNS. What I should say is, that the question there would become the intent of the person who gave the order; that in that case the intent of the builder would be quite immaterial; but in order to explain what I wish to submit to your lordships, suppose this case—suppose, first, that a man orders a ship; that the ship is to be built in a particular way, of a particular construction, and if you like, of a war-like character. The builder receives those orders, and the builder chooses to say, I have no doubt whatever that the ship is intended to be employed in a particular way, and I proceed throughout the building of her with a full understanding on my part that she is to be so employed. I say the builder may be right or wrong in what he speculates upon and conjectures, but the state of his mind upon the subject is irrelevant; it is not the point; he may be perfectly accurate or inaccurate; that is not the point we must go to; we must endeavor to ascertain the mind of the man who has the power to carry the object of his mind into execution; that is not the builder. That is all my observation went to. A very difficult question might arise, which I do not believe arises in this case—a question of this kind: A person orders a ship to be built, such person having the mind to employ the ship in the service of one belligerent to cruise against the other—the builder is entirely ignorant of that intent, knows nothing about it, and thinks nothing about it, and the property in the ship up to a late stage

in its construction is still in the builder; the question is, whether the intent of the person who put the builder into motion can lead to the forfeiture of that which is the property, not of the person who gave the order, but of the builder who has not yet given up the ship. If that question were put to me by one of your lordships, the answer I should humbly give would be (though not arising in the present case) that it would not lead to forfeiture, that the builder would have up to the very last moment a *locus penitentiae*, and that he might say, I have discovered what I never thought of before, for what purpose they are going to use this ship, and I will not fulfill the contract, and will not hand it over.

Mr. BARON BRAMWELL. There seems to be considerable difficulty in the matter, because as I understand, whenever an offense is committed by a person against this seventh section, then the ship is forfeited. In the case you put of an innocent builder and a guilty orderer, the guilty orderer would be guilty within the act, because he would be the person who procured the fitting out with intent. Therefore, though it might be that you could not maintain an indictment against the builder, still the ship would be forfeited. There is enough in this case, without embarrassing it with further questions; but I want to appreciate the ground which you take.

SIR HUGH CAIRNS. It is absurd for me to be presenting views of a case that does not arise; but I should say in that case, the person who procured the act to be done would be subject to an indictment, but that the property would remain in the builder. The builder would be innocent; he would have a *locus penitentiae*, and an opportunity of delivering up the ship, and there would be no forfeiture.

Mr. BARON BRAMWELL. If you say it does not arise, it must be upon the assumption that if the intent can be brought home to any one of those persons, either the builder or Bulloch, it would be sufficient.

SIR HUGH CAIRNS. To that I should answer in the same way. If it be proved that Bulloch was the person who had the control of the ship, the ordering of the ship, and that he intended to use the ship in a particular way, that might lead to the forfeiture of the ship, which is thus proved to be under his control and direction, that may be so; but your lordship has now referred to certain considerations which fortify, I take leave to say, immensely what I ventured to submit to your lordships at the outset, namely, how extremely important it is that it should be definitely fixed and definitely alleged and proved whose is the intent which is said to lead to the forfeiture, because otherwise we are floating about in perfect obscurity. I took leave at the trial to object to the learned attorney general, never condescending upon any name in particular, but leaving the forfeiture to be sought for wherever it could be found. I say we ought to be told who is the person in particular who is said to have had the control of the ship, and to have harbored the design.

I was calling your lordships' attention to Barnes's evidence, which I now proceed with; at page 37" he says he recollects the screw steamer, the *Alexandra*, being built in Messrs. Miller's yard; that at dinner time and breakfast time he frequently went over her while she was building; that she was like the other gunboats, only smaller; that she was like the *Oreto*, only smaller; that he recollected, during the time the *Alexandra* was being built, Captain Tessier coming to the yard. He is asked "Who was he?" He says, "I believe he was the captain of the *Phantom*." This is what led me to make the observation I did as to the *Phantom*. I said I would assume it was proved that Captain Tessier was in communication, either directly or indirectly, with the Confederate States; and here it appears that the *Phantom*, a ship of which he is the captain, is building. I care not what conclusion you draw from that. That accounts very satisfactorily for the circumstance of his being in Messrs. Miller's yard. "What was the *Phantom*?—She was a steel boat. Was she both steel and steam?—Yes. Where was the *Phantom* being built?—In Messrs. Miller's yard. Was the *Alexandra* being built at the same time as the *Phantom*?—Yes. And when Captain Tessier came, what did he do; what vessels did he look at?—He merely used to go round and have a look; he never took so much notice of the gunboat, at least of the *Alexandra*, as he did of the *Phantom*. Did he take notice of the *Alexandra*?—Yes, just looking round her; I never saw him give any instructions. You never saw him give any instructions about the *Alexandra*?—No. Have you heard him give instructions about the *Phantom*?—No, I never did. Which were the vessels he went to look at when he came into the yard?—Chiefly the *Phantom*. Was there any other vessel that he looked at?—Yes, the *Alexandra*, he used chiefly to go round and have a look. Did you know of his going round and looking at other vessels besides the *Phantom* and *Alexandra*?—Yes, he used to go round and look at them all."

Your lordships cannot fail to observe that the Crown throughout this examination expected a different answer to every one of their questions; they expected the witness to say that he went to look at no vessel but the *Alexandra*, or chiefly at her, and that he was not in the habit of looking beyond her or going about the yard and looking at other vessels. "Have you heard him giving directions about the *Phantom*? do you say or not?—I am not certain. Do you know Mr. Speers?—Yes. Who is Mr. Speers?—Mr.


Speers is Messrs. Fawcett, Preston and Company's overlooker." He says that he knows him. He has known him ever since he first went to work for Messrs. Miller. "Messrs. Fawcett, Preston and Company are engineers, are they not?—Yes. When Speers came to your yard, what used he to do?—He seldom used to come unless they were boring the stern-posts for the screw; he used to superintend that. What vessel?—In both the Phantom and the Alexandra." He says that the men were boring out the stern-posts of the Alexandra; that he saw them doing it. Then he is asked, "What were they boring out those stern-posts in the Alexandra for?—For the screw shaft to work." Then he says that he was led to understand that Messrs. Fawcett, Preston and Company furnished the machinery for the Alexandra; that Speers, their foreman, used to superintend the boring; that it was Messrs. Fawcett, Preston and Company's men who were there in both the Alexandra and the Phantom; that they bored out both those vessels. Then he is asked, "What was brought there to be put into the Alexandra?" He says, "I did not see anything brought there, only the boilers. Who brought the boilers?—I cannot say who brought them. Where were they put on board the Alexandra?—In the dock; I did not see them put on board; I saw them after they were in. In the Alexandra?—Yes. Where was it that you saw them in the Alexandra?—In Toxteth dock." Then he says that Messrs. Fawcett and Preston's boiler-makers were there; that was about the boilers. He has seen Speers there too. He recollects the Alexandra being launched in March last. He knows Mr. Mann, whom he describes; and then on cross-examination he says, at the top of page 39,* that he had nothing in the world himself to do with the ship-building. He is asked, "How long had you been there?—About four years altogether." Then he says whose works he had been employed in since he left them; and about the middle of the page he is asked, "What vessels were building in the yard at the time that the Alexandra was built?" He says "There was one called the Huddersfield. What sort of vessel is that?—She is an iron boat. LORD CHIEF BARON. How many vessels were in course of building in the yard altogether?—Four. Mr. MELLISH. The Huddersfield?—Yes; the Huddersfield, the Alexandra, and the Phantom." Then he is asked, "What sort of a boat is the Phantom?—She is a steel boat. Is she a gunboat?—No, not that I know of. Is she a merchant vessel?—She is like a merchant vessel." So much therefore for Barnes, who I think your lordships will be of opinion has not carried the case much further. The only person he says he saw in the neighborhood even of the ship was Captain Tessier, who was the captain of the vessel that was building side by side with the Alexandra, and who was naturally there looking after his own vessel, the machinery of which Messrs. Fawcett, Preston and Company were putting in, as to which there was no dispute.

Then the third witness of this kind and the fourth are those witnesses whose evidence I have already read to your lordships, and therefore I need not repeat it; I mean Robinson, the joiner, at page 40;† and Carter, the joiner, at page 41;‡ they were joiners employed, your lordships will remember, in the works of Messrs. Fawcett, Preston and Company. Their evidence went entirely to endeavor to make out a connection between the guns and the Alexandra, which I have already observed upon in the course of what I have read of their evidence. Your lordships will remember they said that the machinery for the Alexandra was preparing in the works of Messrs. Fawcett and Company, but the machinery for the Phantom was preparing there too; and if it be the case that Mr. Hamilton was a person who in any way was interested about the Phantom, whether in connection with Captain Tessier or not, nothing would be more natural than that he should be in the works of Messrs. Fawcett, Preston and Company looking at the machinery being made for both.

The fifth witness (Robinson and Carter being the third and fourth) would be Hodgson, the packer, to whose evidence in part I have referred on the subject of the guns, but who also says something in addition to what he says about the guns. His evidence begins at page 48, but the passage which I will refer to in addition to what I have read already, is at page 56.† He is asked this question, "You have already said with respect to the machinery, of the bolts and the clenches, that a number was given?—No, only the quality. I am not sure you understand my question; did you not state with respect to the machinery, which to your knowledge was taken on board the Alexandra, and the clenches, and the bolts, that they were made by a particular number?—Yes. What was the number?—2209. Did you ever see Mr. Hamilton inspecting that machinery while it was being made?—Yes, I have seen him inspecting it. Do you remember the night before the Alexandra was seized?—Yes. Were any orders given by Mr. Speers that night for sending anything on board her?—Yes; nothing more was to be done. Was that after the seizure?—Yes. Do you recollect any orders given before which were countermanded by that order? Were any orders given before the seizure to take anything down to the ship?—They came down from the workshops to the packing-room. What were they?—Eccentric pump buckets and bright work. Those were to have been put on board, but were stopped?—No; they were in the packing-room, and were to go down in the morning when she was seized. Do you recollect anything being done for a ship called the Oreto previously?—I cannot say anything

* See page 22.

† See pages 22 and 23.

‡ See page 31. 

about that, because I was not in the packing-room at that time. Do you remember the time that it was talked about?—Yes. At that time were you sent to carry letters? Yes. To what firm?—To firms all over Liverpool. Among others, did you carry any from Fawcett and Company to a firm named Fraser, Trenholm and Company?—Several.” This was at the time the *Oreto* sailed, a time very long anterior to the seizure of the *Alexandra*. “Was the communication frequent between those two firms?—Yes. And you often had to carry those letters?—Yes, very often. Do you recollect the time when the *Oreto* sailed?—Yes. Do you recollect being sent out with any notes the evening before?—Yes. Were there two notes?—Yes. Where were they sent?—One to Fraser, Trenholm and Company, and the other to the Dock Company at the quay. Did you hear either of those notes read by either of the persons to whom they were delivered?—Yes, at the Dock Company’s office I did.” But of course he does not give evidence of what it was. He says, that the *Oreto* sailed the next day. Then he is asked, “Did you see whether any members of the firm of Fawcett and Company were on board of her?—No, I was not there when they started.” I do not know that I need trouble your lordships by reading his cross-examination, in which he says that he was discharged on the allegation of drunkenness, but that that was not a proper accusation to make against him; he says that his only business in the machinery room was to wait when he was sent there for machinery, and to see if it was ready.

[The court adjourned for a short time.]

SIR HUGH CAIRNS. Now, my lords, let me sum up what seems to be the effect of the evidence of these five workmen upon the part of the case which I am now considering. Assuming it to be proved by other evidence that Captain Tassier, Mr. Hamilton, and Captain Bulloch are brought in some way into connection with the confederate government through the house of Fraser, Trenholm and Company, is there in the evidence of these five workmen which I have given your lordships, any sort of connection proved between them and the *Alexandra* which would enable any court or any jury to conclude that they were persons in any way having a control over the *Alexandra*, or having any share in the control or ordering of the *Alexandra*’s movements? What does the evidence amount to? That having a perfectly good reason for being present in the dock or in the ship-building yard, for the purpose of superintending the preparation of the *Phantom*, which clearly was the ship they were connected with, the *Alexandra* happened to be beside her, and that they are seen looking at the one as well as at the other, and that there being engines building in the works of Messrs. Fawcett, Preston and Company, Mr. Hamilton is found in the works of Messrs. Fawcett, Preston and Company, looking, as the witness says, not more at the one than at the other. I apprehend it would be absurd to say as much as this, that this is evidence that would justify the conclusion; but that is not what I have to argue here. What I have to argue is, were the jury upon that evidence bound to come to a conclusion different from that at which they arrived, and is the verdict they came to against the evidence, or against the weight of evidence?

I may be allowed to say with regard to the five witnesses, that the negative aspect of their evidence must be looked at. The Crown had the singular advantage of getting five workmen who had been employed during the building of the ship, and who were acquainted with all that had been done and said about her and her machinery; that was a great advantage which the Crown had, and it is a singular thing, and a thing that could not help impressing the minds of the jury, to find that where the Crown had the command of five witnesses of that kind who were willing to come forward and do some service in behalf of those who called them, during the whole of their experience of the ship-building yards or the works, there is nothing which they can put their finger upon, or state as something said or done, that would connect the *Alexandra* with either the Confederate States or those concerned for the Confederate States. So much for the five workmen.

Now I come to the two witnesses whom I call spies and informers, and there will be a negative aspect of their evidence also, as well as an affirmative one. The first of them was George Temple Chapman, whose evidence is at page 107.* He says he is not a lieutenant in the navy of the United States; that he has no profession; he belongs to the United States, and lately came to England, about four months ago; he was in Liverpool about two months ago. At that time, he says, he wished to see Captain Bulloch. At the top of page 108 he says he went to the office of Fraser, Trenholm and Company, at Liverpool, to see Captain Bulloch. Bulloch was a person he had been acquainted with in America. The date at which he says he went to the office of Fraser, Trenholm and Company, in Liverpool, was about the 1st of April. Let me advert to that date for a moment. I called your lordships’ attention, when I referred to the evidence of Black, to this fact. Black told you that on the 21st March he had been sent to observe the state of the *Alexandra*, with the view to those proceedings which evidently led to her seizure. He had been put in motion by those concerned for the government of the United States, and on the 6th of April the *Alexandra* was seized;

* See page 60.

her seizure was in contemplation, therefore; or at all events, steps were taken to lead to it between the 21st of March and the 6th of April. He says he went on the 1st April to the office of Fraser, Trenholm and Company to see Captain Bulloch. He says he went more than once for that purpose; that on the first occasion when he went there he did not see Captain Bulloch, but he saw a gentleman of the name of Prioleau, that was one of the partners of the firm of Fraser, Trenholm and Company. He says he did not transact business with him, but that he communicated with him as an American, and led him to infer that he, the witness, was a secessionist, and communicated with Mr. Prioleau, who was said to be a secessionist also, as if he was a sympathizer with him, a compatriot willing to assist him and forward his views. Then he is asked: "Did you communicate with him as filling any character?—No. I suppose I am not at liberty to ask what he said, but I will ask you did you see anything in his office; over Mr. Prioleau's desk, did you see anything in his office?—I saw an English and another flag. What was that other flag?—What the Americans call the confederate flag. Where did you see the flag which you say was called the confederate flag?—In his front office, where his clerks were sitting. Did you communicate with him at all about the business upon which you had come to see Captain Bulloch?—I did. Did that business relate to Mr. Bulloch's private affairs?—Partially it did, and partly to the affairs of the confederate government. Were you acquainted in the United States with a person named Clarence Yonge?—I was not." At page 109 there is one question and answer below the middle of the page to which I will call your attention: "Did you call again?—I did. When you called again, did you see Captain Bulloch?—Yes. While you were at Fraser, Trenholm and Company's conversing with Captain Bulloch, did you refer to these letters?—I did. And communicated with them on the subject of them?—Yes. Did the person you saw there admit himself to be the person referred to in these letters?—He did."

Now, my lords, I pass on, because I am only taking the parts that are material for the present purpose to the bottom of page 111.* "Now, Mr. Chapman, while you were at that office, that is, the office of Fraser, Trenholm and Company, with Captain Bulloch, did any one else come in?—Mr. Hamilton. Who was Mr. Hamilton; was he a person known to you before?—Yes; he was. What was he?—The son of General James Hamilton, of South Carolina, formerly governor of that State; and he was himself a lieutenant in the service of the United States until the year 1861. And then what was he afterward?—He resigned his command in the service of the United States, I think, early in 1861."

Now, my lords, what have we got here! On the 1st of April, at the time when the seizure of the *Alexandra* was contemplated, that is to say, at the time that the government of the United States were anxious that the seizure should be made and that the ship should be detained, Mr. George Temple Chapman goes to the office of Messrs. Fraser, Trenholm and Company, who are supposed to sympathize with the Confederate States, and he puts on a false and assumed character; he pretends that he is a sympathizer with them; that he is what is called a secessionist; he enters, therefore, into the freest and most unreserved communication with Mr. Prioleau, and not only with Mr. Prioleau, but with two gentlemen, said to entertain the same views, Captain Bulloch and Mr. Hamilton.

One observation, my lords, of course, occurs as to the affirmative view of the evidence. It is not pretended that anything whatever passed there coupling itself or connecting itself with the *Alexandra*. Not a word of the kind. But I ask your lordships negatively to consider this. There cannot be the least doubt, I apprehend, that any jury would, without hesitation, come to the conclusion that this visit to the office of Messrs. Fraser, Trenholm and Company by Mr. George Temple Chapman was paid, beyond all doubt, to forward the views that were then entertained with regard to the detention of the *Alexandra*, to procure evidence, if evidence could be procured, to couple the *Alexandra* with some person connected with the Confederate States, in order to prove that she was intended to be employed by the Confederate States. I say it is a conclusion which is irresistible upon the facts that we have here, and which any jury would be warranted in inferring from the facts. Observe the consequences. This gentleman goes and worms himself into all the secrets of this house, and gets into all their confidences, and yet it turns out that he is unable to say that anything whatever passed, or he was unable to act upon anything which did pass, which would in any way enable him to bring home the slightest and most transient amount of connection between Fraser, Trenholm and Company, or Captain Bulloch, or Mr. Hamilton, and the ship *Alexandra*. I say nothing more striking or conspicuous could happen in a case of this kind than that fact, that a man who would resort to devices and artifices of this sort to obtain the end he had in view; who succeeded to a great extent, for he took in those whom he wished to defraud, although he attained his object in that way, yet was unable to obtain anything whatever which could be turned to advantage in respect to the *Alexandra*. So much for the evidence of Chapman, which not only does

* See page 62, near the bottom.

not advance the case, but puts it back beyond any possibility of giving support to the allegations in the information.

Now, my lords, the other gentleman who was referred to was a gentleman of a different character, a person who calls himself Mr. Clarence Randolph Yonge, and his evidence is at page 113.* My lords, I observe that the attorney general, in moving for the rule, stated to your lordships that with regard to Mr. Clarence Randolph Yonge he did not mean to justify all that he did in this case. That is a very interesting observation, because it leads me to expect that the attorney general will be prepared to justify something that Mr. Yonge did, though he is not prepared to justify all of it, and I shall listen with the greatest interest and some amount of excitement to hear whether a man alive will be found (and my learned friend the attorney general is as bold as most men) to justify one scrap or tittle of the conduct of Clarence Randolph Yonge, as related by himself, from the beginning of the case to the end.

But my learned friend, the attorney general, I cannot help thinking, misapprehended very considerably the observations which were made upon the evidence of Clarence Randolph Yonge at the trial. The attorney general, in his address to your lordship on moving for this rule, said, it is very true that some charges were made against this witness; it was said on the part of the claimants that he had a black slave that he wanted to sell, and it was put forward as if that should disentitle his evidence to weight. My learned friend went on to make one or two observations which seemed to be rather irrelevant, and which I cannot help thinking were not in my learned friend's usual good taste, when he said that, according to the constitution and laws of the Confederate States, this man, who was a white man, would be a perfectly good witness in any court, whereas the slave, being a black man, would not have been a witness at all. I do not quite know why, on a trial of this kind, we should go out of our way on either one side or the other to insult the one or the other state with reference to their laws or their constitution; we may like them or dislike them; it is nothing to us.

But my learned friend mistook entirely, mistook beyond a mistake which I could have conceived could have been made, what was the nature of the reference to Clarence Randolph Yonge, and his dealings, among other things, with reference to the black slave, of which he became the owner. Fortunately I need not read the whole of this evidence. I will tell your lordships the history of this man; first, with respect to his public character, and then with respect to his private character. As to his public character his history was this: He was a native of one of the southern States of America, what are now called the Confederate States. He chose to enter the naval service of those States, and to accept the commission of an officer, and to undertake all the responsibility, allegiance, service, and good faith which that step on his part would involve; he continued for a considerable length of time, in fact for some years, an officer in the service, received his pay in that capacity, and was bound to all the allegiance which would follow from that. And not only so, but being an officer he was taken into the confidence of a person who was his superior in rank and position, a Captain Bulloch, whose name has been referred to. He became, according to his own confession, if not the private secretary of Captain Bulloch, as probably we should call him, at all events the person who was confidentially employed to copy the letters and to write the letters of Captain Bulloch, and to receive the letters sent to Captain Bulloch from those above Captain Bulloch in the employment of the government of the Confederate States. He was familiarly employed in that way, and he became acquainted by those means with the private information which flowed from persons holding situations of this kind, such as the secretary of the navy of the Confederate States. He continued in that position, bearing that character and getting his information in that way, so that up to a certain day in the month of January of this year he was employed as a naval officer on board the Alabama, (he was the purser or paymaster on board that ship,) and then he deserted—that is what we call it—that is to say, he dropped overboard, or got on shore in some way, while his ship was lying at Port Royal, in Jamaica, at night, and never rejoined her. The ship sailed without him, he purposely having left the ship, in order that he might not sail with her. As rapidly as the communication between the two countries would allow he came to England, landed at Liverpool, hurried up to London, and laid the whole of the information he had obtained, in the confidential position which he had filled, at the disposal of the minister of the United States. He did that and more—he did worse—he volunteered, as soon as he could be dispensed with here, to go back to America, and pursue the same course again, in order to perform any other service of a similar nature which he could perform for the government of the United States. That is his statement, from which I have drawn his public character, and I am happy to think that it is not necessary for me to comment upon it. My learned friend, the attorney general, will not justify all of it—he will probably justify some part of that conduct.

The private character of this Mr. Clarence R. Yonge was this. He was married in Georgia; his wife was living there, and he had a family by her—he left her and embarked on board the Alabama. While the Alabama was lying off one of the West India

* See page 64.

Islands, he lodged in the house of a widow having a little property, represented himself as being unmarried, and went through the ceremony of a marriage with her, which, of course, was nugatory. As soon as he had married her he sold off all her property and got the money. I am wrong in saying "all," there was one exception. She had in her employment a black servant, (he would not be a slave, of course, in Jamaica,) a boy of fourteen or fifteen years old. Mr. Yonge, the witness, with whom I am dealing, after he had married this woman and got possession of all the rest of her property, represented to her that it would be a good thing to put themselves in a position to sell this boy, and for that purpose to take him to Charleston, where of course he could be sold, being a boy of color. But then, in order to persuade her to accompany him to England, he represented that the only way in which they could get to Charleston was to go to England first, and then they would go from England to Charleston by running the blockade. He, in that manner, persuaded her to come to England, and having landed with her in Liverpool, left her at Liverpool penniless and adrift upon the bounty of strangers. I do not know whether it appears upon the evidence or not, that she had to go to a magistrate to get support. But at all events he left her there penniless, when he came up to London to give information to the United States minister. That is his private character. So that your lordships have there united the public and private characters of this witness.

Now, my lords, one passes with some sort of satisfaction from that subject, for it requires no sort of comment in this court. What we submitted to the jury about this witness was this, that if he had come forward, and in the quantity of information which he was ready to give, even if he had said anything which connected itself with the Alexandra, we should still have said, as we did say, and say I am sure in a way that no person would dispute, that no jury would for a moment attach weight or credit to the evidence of such a witness—that would have been so if he had said anything which did connect itself in any shape or form with the Alexandra.

But, my lord, the remarkable thing again was this, with this witness as with Mr. Chapman, he had been, as I told your lordships, in confidential communication on the other side of the water with all who were in office on the part of the Confederate States. When I say that he had been in communication, your lordships understand what I mean, not himself personally, but the letters passed through his hands, and he saw everything which was passing. It was a matter which could not fail to strike any jury, I apprehend, that, with a witness of this kind coming forward to do everything he possibly could to assist the case of those who put him into the box, he was unable to suggest that directly or indirectly he, in any shape or form, had reason to think or was able to prove that there was any kind of connection between the Alexandra, or any design formed in regard to building her, and anything which he had seen or heard in the secessionist States. It is true he was not in Liverpool at the time when the ship was built, but he was in a position where, according to his own account, he had full command of access to the knowledge of all the proceedings which were taking place on behalf of those who were interested for the Confederate States, and upon the whole of those occasions he could not venture to say that a single thing had ever occurred which could lead him to say a word as to the Alexandra, or as to any idea or knowledge of his as to the purpose for which she was intended.

I, therefore, my lords, am relieved from reading to your lordships what I call the loathsome evidence of this witness. My learned friend, the attorney general, may deal with it as he pleases. I make him a present of him. The witness, if he said anything which could be *ad rem* with reference to the trial, would be a witness entirely without credit. I appeal to the absence of the information which a person in his position would be anxious to give, and which he could not give, as a proof that there was nothing to be said which could connect itself with the Alexandra.

Now, my lords, there remains one witness still upon whose evidence the Crown thought fit to rely very much. I mean the witness Da Costa; and I may observe that my learned friend the attorney general, who gave so very mild a character to Mr. Clarence Randolph Yonge, with regard to Mr. Da Costa soared aloft, and declared that he was a witness straightforward and unimpeachable; that he was a witness whose manner and character must have commended themselves to any one who heard him, and that he was not aware that a word could be said against the evidence that he gave. I shall take leave to present a very different view of his evidence, and certainly we went to the jury upon a view of his evidence very different from that. I venture to say that every vice of which a witness could be guilty was found in the evidence of Da Costa. He was a witness who was too willing to do the work he was called upon to do, and he was a witness who was utterly unwilling to give any information which did not connect itself with the subject of what he had in his mind to prove.

I will just give your lordships one or two samples of the way in which this witness gave his evidence, not to ask your lordships to draw conclusions from it, but to show the sort of evidence upon which we went to the jury, and to show how well warranted the jury were in treating the statements of this witness, if they were relevant, as statements upon which no reliance could be placed. One thing is very remarkable in the

evidence of Da Costa, that even when he was being examined in chief by the Crown, it was found impossible to control him. In answer to every question which was put to him, he would insist upon saying that the Alexandra was a gunboat. And whenever the counsel for the Crown said "the Alexandra," he would answer "the gunboat." And when 'one of my learned friends checked him, he said, "I know her only as the gunboat. I will call her only the gunboat," and he never called her anything else from beginning to end. I will give an instance: First of all, at page 65,* in his examination on behalf of those who called him, he is asked at that time about some interview with Mr. Miller, "Can you say how long that was before the Emperor was launched?" He says, "About a week, the last time. And in what month?—The vessel was launched on the 8th of January, in this present year, and it was, I think, New Year's day that I saw Mr. Miller. At that time did you see the Alexandra in Mr. Miller's yard?—I saw that gunboat." This is in answer to his own counsel, my learned friend the Queen's advocate, "I saw that gunboat." Then about three questions lower down, "Did you ever see the Alexandra in Mr. Miller's yard?—I did. How long was it before the Emperor was launched that you saw her there?—From September, when they laid the blocks for her; for this gunboat." I took leave to say, "Do not call her a 'gunboat.'" His answer is this, "I do not know her by anything but a 'gunboat.'" And in page 99,† in his cross-examination, nearly at the bottom of the page, he says this: In the last question but one he is asked, "The Phantom, Captain Tessier commanded, did he not?—He took her away from this port, (from Liverpool.) And was he generally down at the Phantom at the time of her being built?—Both at the gunboat and at her. I did not ask you that question," my learned friend says. He answers, "He was at both. Was he frequently down at the Phantom during the time she was building?—He was, and at the gunboat. I did not ask you that question.—I am answering you both. I ask you about the Phantom?—If you ask me whether he was coming there, I must tell you what he was doing. I ask you about the Phantom; you can tell us about the other; I ask you now about the Phantom?—He was at both vessels." The witness was excited and determined that no kind of examination, whether it came from the one side or the other, should prevent him from reiterating the assertion he came here to make. "There is a gunboat! There is a gunboat! There is a gunboat! and that is all I am going to tell you about it."

Now, my lords, what did he tell us about himself? On page 64,‡ you will find that, on his appearing in the box, he was asked by the Queen's advocate: "What are you by profession?" His answer was, "A shipping agent, a ship-owner, and a steamboat-owner." One of the most eminent merchants in Liverpool, every person thought, and looked upon him with great respect for some time. "A shipping agent, a ship-owner, and a steamboat-owner." Surely this man must, at least in social position, be above all kinds of remark, such as might be made upon some of the other witnesses. At page 98,§ you will find he turned out to be this: I always understood that the term "a shipping agent" had certainly a meaning connected with commercial affairs, and the forwarding of goods. It turns out that his notion of it was this: He deals in sailors, and is what is popularly termed "a crimp;" he deals in sailors, and keeps a boarding-house connected with this sort of dealing. And as regards his being a ship-owner, he has merely a share; I do not know how much; but he is a partner in a tug that tows boats out of the docks.

Now, my lords, what have we in addition to that? Your lordships will observe I am only giving samples. I do not want to prove facts; but I am asking your lordship's attention to a sample or two of the way in which the witness gave his evidence. If you cast your eye down page 99,§ (it would be improper for me to read it,) I think your lordships will see that he evidently fenced with a question, the answer to which he could not fail to have known, namely, the fact that a quarrel of some kind had taken place between himself and Mr. Miller, (Mr. Miller being the person who built the tug in which he was a partner,) and that Mr. Miller had brought an action, which was then pending against himself (Da Costa) and his partners. On that point he said that he did not know that an action was pending, but would not be sure upon the point. A very curious sort of statement, which, of course, a jury very well knows how to deal with. That was the character of the witness upon general points.

Now I will take your lordships to the part of the evidence which was relied upon by the Crown. At page 74|| this straightforward and highly respectable gentleman gave this evidence. There was a considerable discussion as to whether the evidence could be admitted; it is on the second day, at page 87,¶ that the evidence really commences. Your lordships will find it begins in the middle of the paragraph headed "Queen's advocate," more than half way down the page. "Do you remember a short time before the Emperor was launched, having a conversation with Mr. Miller, senior?" (The Emperor was a tug boat that was being built.) He says, "Yes. When was the Emperor launched? On the 8th day of January. 1863?—Yes. You say you remember having a conversation with him; and now I ask you what that conversation was?" Then a little lower down

* See page 37. † See page 56. ‡ See page 36. § See page 55. || See page 42. ¶ See page 49.

the Queen's advocate says, "Perhaps I had better put it—Had he a conversation with you about the *Alexandra*?"—He answers, "Several times. Now, then, I will ask you further, "You had a conversation about the *Alexandra*?—Yes. Did he in the course of that conversation say anything to you as to what the *Alexandra* was intended for?—On three different occasions." Then an interposition as to an objection took place, and then the Queen's advocate resumes thus, "Did he in the course of that conversation tell you what she was intended for?—He did. What did he say?—He told me she was a gunboat for the southern confederacy. Did he say anything to you at that time about a contract for the *Alexandra*?—He did, my lord; must I give you the exact words that passed? LORD CHIEF BARON. Give us the best of your recollection of what passed. The QUEEN'S ADVOCATE. The question is: Did he say anything to you then about a contract for the *Alexandra*?—He said, 'We, conjointly with Messrs. Fawcett, Preston and Company, are building this vessel for Messrs. Fraser, Trenholm and Company.' Did he say for whom?—They were the agents for the southern confederacy." Then I asked, "Did he say that?—Those are the words he said. The QUEEN'S ADVOCATE. What did he say?—They were the agents; in the conversation that took place he several times said so. In the conversation that took place he said several times that they were the agents for whom?—For the southern confederacy. Had you any other conversations with him about the *Alexandra*, and for whom she was intended?—Yes, certainly. What did he say at those other times?—It was the same sort of thing. LORD CHIEF BARON. It was to the same effect?—Yes. The QUEEN'S ADVOCATE. Were these conversations that you are now speaking to before or after the launching?—Before the launching. Were these conversations which you have last spoken to before or after the one you have mentioned?—These were after. And on several occasions you say he said the same thing?—Yes." I will postpone any observations which I may have to make upon that till I have read the whole of that which bears upon that point. If your lordships will turn to the middle of the next page, page 89,* your lordships will find this, "Do you remember having a conversation with Mr. Miller upon the subject of the *Alexandra* in November, 1862?" He said, "I do. Do you remember whether he said anything about the name of the vessel on that occasion in November 1862?—He did. What did he say?—*Alexandra*. Tell me what he said?—He said that the vessel, the gunboat," (that is a little parenthesis of his own, which always comes in,) "was to be called the *Alexandra*." "Did you ask him any question why she was to be called the *Alexandra*?—I did. What was the question?—I asked him, was that a name of some state or city, and he said it was. Did he say where it was?—He said it was in the southern States; I think that was the word. Did he say anything about its agreeing with any other name?—He said it was in unison with the *Alabama* and the *Florida*. Upon this point, I will ask, did he ever speak of the *Florida*, as you call it, by any other name?—The *Oreto*. You have told us about a conversation in November 1862; do you remember having a conversation with him in December 1862; do you remember having another conversation with him in the next month?—Yes. Do you remember anything in that conversation being said about guns?—I cannot say; I do not remember about the guns. You do not remember anything being said about guns?—Not in December. Do you remember anything being said about copper? Then he says, "I said I thought we had a great deal of copper going on board for a vessel of that size." He adds, "He said it did not matter; the parties that they were for did not care for expense. Do you remember at any time his saying anything to you about a gun in connection with the *Alexandra*, or guns?—Nothing; only gunboat, that is all. That is all you remember?—Yes." Then he says he knows Captain Tessier and Mr. Welsman slightly. He knows Mr. Welsman by sight. My lord asks: "Is Mr. Welsman a member of the firm of Fraser, Trenholm and Company?—He is." Then he is asked, "Did you see him there more than once?" (that is in Mr. Miller's yard during the time when the *Alexandra* was building.)—"Yes. Did he do anything when he was there?" Allow me to call your lordships' attention to the answer, "I saw him giving orders for one of the men to work at this boat. That is this *Alexandra* you mean?—Yes. Did you see him doing that more than once?—The order—that was only once. Did you see him doing anything else besides giving orders?—He was always inspecting round about. Always inspecting do you say?—When I saw him. Do you know Captain Tessier; I think you said you did?—Quite well. Have you seen him there during the time the *Alexandra* was being built?—Yes. More than once?—Yes. Have you seen him there frequently?—Yes. Have you heard him give any orders respecting the gunboat?—I did not hear him give any orders." Now we pass, my lords, to page 97,† where he is asked this, it is a little above the middle of the page. "I want now to draw your attention to a particular occasion. Do you remember after the Emperor's trial trip, I am not sure whether it was after the first or the second, but it was after one of the trial trips of the Emperor, do you remember being in the cabin of the Emperor with Mr. Miller, senior?"—He says, "He was in the cabin when I was there. Was this at the trial trip?—The QUEEN'S ADVOCATE. It was after the trial trip. Was it after the first or the second trial trip?—The second. Now on that occasion do you remember whether young Mr. Miller came

* See page 50.

† See page 54. Digitized by Google

down and called to his father?—He did.” And then, lower down, he says, “He told me that Captain Tessier wanted him;” that is, Miller, senior. Then he says, “He came up,” and then he says that he (the witness) “was up close with him.” Then he is asked, “And then were you and old Mr. Miller and young Mr. Miller and Captain Tessier on deck at the same time?—Yes. Did Captain Tessier on that occasion say anything to Miller, senior, about the *Alexandra*. First of all say ‘yes’ or ‘no.’ Did he say anything?—He did. What did he say?” Then passing to the next page, below the middle, after the question was discussed as to whether it should be put or not, you will see this, “Did he say anything as to the construction of the *Alexandra*?” He says, yes. Tell us what he said with reference to the construction of the *Alexandra*.—He wanted the combings of the hatch higher. That is what he said?—Yes. Did he say how much higher he wanted them?—Three inches, I think it was. Of what hatch?—The main hatch. Did Miller, senior, make any answer?—He did. What did he say?—He said he would not do it; it was according to contract.” By which I understand that, as it was, it was according to contract. “LORD CHIEF BARON POLLOCK. What was done was according to contract?—Yes. But what was proposed to be done was not according to contract?—No. The QUEEN’S ADVOCATE. That is, that Mr. Miller said he would not do it, because what was done had been done according to contract?—Yes.”

Now, my lords, there is a passage or two in the cross-examination which I will take with that. It is at page 100,* about eight lines down the page. “You say you saw him” (that was Mr. Welsman) “give an order on board the *Alexandra*?—I did not see him. Mr. Welsman, not Captain Tessier?” The QUEEN’S ADVOCATE. No, he did not say that. Mr. KARSLAKE. He said, “I did not hear him give orders, he was about superintending.” Then he is asked this question: “I observed you dwelt particularly on the word, ‘saw.’ Did you ever hear Mr. Welsman give an order?—I did. What was it?—He told a man to knock off; he was doing something different to his wishes, and the man did knock off.” In his examination in chief, I may observe, that he said he heard him give orders to a man to work at the boat. That was the only occasion, he says, he ever heard an order given, and the order he heard given was that he ordered a man to work at the boat. His words are—“I saw him giving orders for one of the men to work at this boat.” Then on cross-examination, what he says he heard was this—“He told a man to knock off; he was doing something different to his wishes, and the man did knock off. That is, he stopped work?—He stopped work and went away. Did you see the *Alexandra* launched?—No. Do you know that she was launched on the day that the Princess of Wales came to London?—I could not tell the day; I do not know.” Of course he would not venture to know anything at all so plain as that.

Now I have read to your lordships the evidence upon this part of the case which is relied upon by the Crown. It is, as your lordships see, evidence given by Da Costa of a statement made by Mr. Miller, the builder of the ship. That is the kind of evidence which they bring forward. The first observation that occurs upon the evidence is this: Suppose it were unimpeachable; suppose there were not a word to be said against the evidence of this witness; suppose there were no reason to ask the jury to disbelieve him, either in point of accuracy or on any other ground; then the first question that presents itself is this: In this proceeding in this suit, what is the effect of the statement of Mr. Miller, even supposing it to have been made? Now, there was a considerable amount of argument at the trial as to whether in the first instance such evidence was receivable at all. We, of course, objected to it, and if the result of the argument had gone the other way, we should have asked for a further consideration in the shape of a bill of exceptions on that point. But the Lord Chief Baron, when he came to the conclusion that in form it ought to be admitted, carefully guarded himself by saying that the question was left open as to what the effect of a statement made by a person in Mr. Miller’s position might be upon other persons who were no parties to the statement. Then the point may be put thus: You have a person like Mr. Miller, who, upon the evidence of Da Costa himself, is building a ship by contract, involving, therefore, the necessity that he is building it as the person employed by some person or persons who are his employers. Therefore, I submit that, whether in point of form the evidence is admissible or not, at all events it is an observation which occurs upon the effect of the evidence, that if you find a statement alleged to have been made, and believe it to have been made, by Mr. Miller, the person building the ship by contract, just as the intent of Mr. Miller, if he is only employed in building the ship as an agent would not be material within the purview of this act, so *a multo fortiori* a statement made by Mr. Miller in the course of his building, that the ship is to be used for a particular purpose, must be a statement which if received can affect no person who is admitted to have a property in the vessel. I should submit that, if there was not a word to be said against the accuracy of Da Costa in general, any statement made by him as to what Mr. Miller, the builder, said, would not weigh a feather as against the persons who have the property in this vessel.

Again let me ask your lordships to observe what the jury had to consider, and what

was put to the jury broadly and clearly. There was a witness whose manner and character had the observations to be made upon them which I have made. And now take the statement he himself makes of this conversation; is that a statement which upon the face of it ought to be received by the jury as true? Can anything so wholly foreign to the ordinary course of business among mankind be supposed as that which this witness tells us? He was a person not in any way particularly intimate with Mr. Miller; the only connection he had with Mr. Miller, the only ground he had for being present in the yard was that he, Miller, was building a tug in which he, Da Costa, happened to be a partner. It was not a matter of common ignorance that proceedings were being taken in Liverpool about this very time with reference to ships as to which the United States government complained that they should not be allowed to leave the port of Liverpool. Is it probable or credible then that Mr. Miller would make a communication which necessarily would be a communication of a confidential and secret character, to a person like Da Costa, with whom he had no connection, and as to whom he had no motive for making such a communication?

Then, my lords, look at what the communication is said to have been. It is unfortunately but too clear upon the face of it, that it is a statement made actually by repeating almost the very words of one of the counts of the information. That statement is this, that Mr. Miller said, I, in conjunction with Messrs. Fawcett, Preston and Company, are building the Alexandra for Messrs. Fraser, Trenholm and Company, who are the agents for the Confederate States of South America. It is a statement, I say, made clearly and distinctly to prove one of the counts of the information, and it is a statement which in common life it is utterly impossible to believe that Mr. Miller made; but it does not stop there. The witness says, he made it three times; then he enlarges the statement he has made to "several times." Can any man conceive that a statement of that sort, a statement which you cannot believe in probability was made once, should have been made several times upon one occasion, and repeated upon others? The thing is incredible. But all I have to say is, that it was for the jury to say whether with those observations to which I say the evidence of Da Costa is open, that evidence ought to be credited and received, and whether, supposing that a declaration of Mr. Miller would have an effect upon the case, they were to believe that that declaration ever was made.

Now, my lords, I have submitted to your lordships the view of the evidence which I should desire to present in opposition to that part of the rule which asserts that the verdict was against the evidence, or against the weight of evidence. I say it was for the Crown, in a case of a forfeiture, or a case of an offense, to prove their case with reasonable certainty; I do not say to demonstration; but I say this was the kind of evidence which they presented to the jury, and I say that if the jury had found differently, I should have had very good ground to complain of and find fault with the finding of the jury. Upon that point very different opinions may be entertained; but at all events it was for the jury to say whether upon that evidence they found that the intent, with respect to the employment of the ship, which would bring it within the section, was made out. And if they arrived at the conclusion that that intent was not made out, I say that they were warranted—clearly and distinctly warranted—in arriving at that conclusion.

That brings me to what I propose to myself as the third and remaining point with which I have to trouble your lordships, and it is a point which will lie within a very narrow compass. Having submitted to your lordships the view of what I apprehend to be the law upon a case of this kind, and having submitted the view of the evidence which we represent, I come to the direction which was understood to come from the Lord Chief Baron to the jury, and to apply that direction to the law and the facts I have mentioned. Now, my lords, I have had the advantage of perusing the short-hand writer's notes, in two different editions, I may say, of the charge of the learned Lord Chief Baron, and I will submit to your lordships the propositions which I understand to be deducible from that charge. And, if I am right with respect to those propositions, in saying that they are fairly deducible from the charge, I think your lordships will be of opinion that those propositions would carry to the mind of the jury a sufficient and reasonably proper explanation of the law on the subject as applicable to the case before them.

But, my lords, I cannot help quoting, as an observation upon that question, what I see fell from a learned judge of another court, Mr. Justice Crompton, with reference to criticisms such as are sometimes made upon the charge of a learned judge upon an occasion of this kind. It was in the case of the Queen against Russell, which was an application for a new trial on an indictment for obstructing navigation, on the ground of misdirection, which is reported in the twenty-third volume of the new series of the Law Journal, (it is an appeal from a magistrate's court,) at page 173: "No doubt any expression thrown in by a judge may, strictly speaking, have an effect on the verdict; but the real question is, as said by my brother Coleridge, whether the direction was practically correct. If it was, we should not disturb the verdict on that ground; I am satisfied that the learned judge did not use the words in the sense complained of; my

only doubt has been whether the jury may not have misunderstood him. If they had done so, I should imagine he would have interposed when the verdict was returned, and directed it to be entered for the Crown. It is dangerous to pick out particular expressions from a judge's summing up, and to criticise them verbally when he is substantially correct in the direction he gives to the jury." My lords, I think that is a fair canon of interpretation to apply to the charge of a learned judge. It is quite obvious that no charge to a jury could practically be sustained if it were not looked at and judged from the point of view there laid down.

Now, my lords, I come to the propositions which I deduce from the words of the learned Lord Chief Baron in this case, and I will refer to the parts of the charge from which I deduce them. They are four in number, though they go to make up one general view of the case. My lords, in the first place, I understand the Lord Chief Baron to have laid down this to the jury, that to build a ship, as distinguished from equipping, fitting out, furnishing, and arming her, is not an offense within the act of Parliament, even although the ship so built might be easily convertible into a ship of war.

LORD CHIEF BARON. For a power not actually engaged in war a ship may be built and even completely armed; the statute would not prevent it at all.

SIR HUGH CAIRNS. No doubt, my lord, that would be upon another point, as an article of merchandise, of course; but I was speaking now irrespectively of the question whether it was intended to sell a ship as an article of merchandise or not; but I understand the charge of the Lord Chief Baron to go to this, that the building of a ship is distinct from equipping, fitting out, furnishing, and arming, though the ship might be easily converted into a ship of war.

LORD CHIEF BARON. It seems to me to be as plain as possible, that you must give some effect to the omission of the word "build;" otherwise, if it was intended that nothing of that sort should be done, it would have been the easiest thing in the world to say "you shall not build."

SIR HUGH CAIRNS. Quite so, my lord.

LORD CHIEF BARON. I think it is important, in order to get at what was meant not to be done, to find out what it is that you are allowed to do. If I recollect rightly, in some of the matters that you have alluded to, in the correspondence which led to the adoption of these rules of Washington's, there are some words as to the course which it was desirable to take.

SIR HUGH CAIRNS. He says, "We are a ship-building nation;" we must take care not to interfere with that.

LORD CHIEF BARON. Just so; they would not like to have the entire craft of ship-building abolished.

SIR HUGH CAIRNS. The second proposition which, if I understand the charge aright, I conceive to be laid down, is this, that the Alexandra clearly was not armed, and that it was for the jury to say whether she was equipped, fitted out, or furnished, or intended so to be, within her Majesty's dominions. The third proposition which is deducible from his lordship's charge—I do not mean to say that these propositions were laid down, it is not the habit to lay them down distinctly—was this—

MR. BARON CHANNELL. You say, "equipped, furnished, or fitted out within her Majesty's dominions."

SIR HUGH CAIRNS. Yes, my lord.

MR. BARON BRAMWELL. Or intended so to be.

SIR HUGH CAIRNS. Or intended so to be. The third proposition which I collect is this, that the equipment, furnishing, or fitting out must be of a warlike character. And the fourth proposition I understand to be this, (and I will in a moment compare it with what fell from my lord this morning,) that it was for the jury to say whether they considered that there was any intention of employing the ship to cruise and commit hostilities at all.

Now, my lords, I ask for a moment your lordships' attention to the fourth of these propositions before I come to the charge itself; because I must say, that it seemed to me that if any person could have had any just ground of complaint with regard to that part of the charge, it would have been, not the Crown, but the claimants; because, if I might take leave to say so, with very great respect to my lord, what I should observe upon that is this—that perhaps that proposition has in it a breadth which is not necessary, and as to which the claimants might say that it was putting the case in an unfavorable way for them. For example, on behalf of the claimants I take leave to think I might say, Do not leave it to the jury—or that your lordship should not leave it to the jury—to say whether there was an intent to employ the ship to cruise and commit hostilities at all—I might say, leave it to the jury in a more limited form—leave it to the jury to say whether there was an intent to employ her to cruise and commit hostilities on the part of one belligerent against the other belligerent. That is a much more limited proposition. But my lord left the larger one to the jury, as I understand it. And therefore I say, that if any one can complain of that it is the claimants, that is the defendants, and not the Crown, because if the jury found against the Crown upon the larger proposition, *a multo fortiori* they would have found against

the Crown upon the smaller proposition. It seems to me, therefore, that, entirely owing to what my lord said this morning, that he did not think it necessary to put to the jury about the particular service upon which the vessel was to be employed, if it is the case, as I think I shall show that it is, that though he left the question to the jury whether she was to be employed to cruise and commit hostilities at all, he left out the other question involved in it, whether she was to be employed in the service of A against B.

Now, I will give an example of the passages which seem to bear out the propositions which I have submitted to your lordships as the effect of the charge.

LORD CHIEF BARON. My intention was to assume that she was intended by those who were intending ultimately to employ her for the confederate government. I will read to you a part of what I said, at page 232: "I do not know what conclusion you would come to as to what service she was intended for. If it became a matter of importance to decide that, it would be a question for you to decide whether it amounted to more than a strong suspicion, or whether it was so made out to your entire satisfaction as to justify a verdict in that direction."

SIR HUGH CAIRNS. No doubt, my lord; nothing could be more distinct. Your lordship did not put it to the jury for what particular service she was intended; but if your lordship will bear with me for a moment I will come to that passage by and by.

LORD CHIEF BARON. Allow me to finish the sentence. "But, gentlemen, I do not propose to put that to you, nor do I think it worth while to follow the learned attorney general through the whitewashing of Clarence Randolph Yonge, because, after all, what he proved seems to me to have the least possible connection with or effect upon the real question in this case, which I take to be this—Was the vessel built or was it merely in course of building? Now, gentlemen, I present the matter to you in another point of view, and then comes the question as to the words employed."

SIR HUGH CAIRNS. Yes, upon that part, as to the words, I shall have something to say.

LORD CHIEF BARON. And then comes the allusion to the case cited by the attorney general then for the first time, not in the opening, but for the purpose, I imagine, of putting the court in possession of all he meant to rely upon, which case, he having cited, I adopted. I am not sure that, if the question were to be argued here, I should entirely concur in that; it would require a good deal of consideration, and perhaps, some little reflection, but I adopted it, and stated to the jury that I considered myself upon that occasion bound by that authority, and left it to them as part of the law of the case. Then I go on, "I do not mean to say that it is absolutely necessary, (and I think that the learned attorney general is right in that,) it is not perhaps necessary that the vessel should be armed at all points; though it may be that the case cited from 6 Peters's Reports by the learned attorney general, somewhat late in the day, is a case where the jury found that the vessel was actually fitted out." It was admitted that she was not armed at all. They found so most properly, for she actually sailed away with the captain, who afterward turned her into a privateer, and she went away, in a great measure, fitted. The jury found that she was fitted," and it was quite clear that she was not armed. "The question is, whether you think that this vessel was fitted. Armed, she certainly was not; but was there an intention that she should be furnished, fitted, or equipped at Liverpool?" (leaving "armed" quite out of the question.) "Because gentlemen, I must say," (and here comes that "if,") "it seems to me that, in respect of the Alabama, if she sailed away from Liverpool without any arms at all, merely a ship in ballast, unfurnished, unequipped, unprepared, and her arms were put in at Terceira, not a port in her Majesty's dominions, the foreign enlistment act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever." I certainly meant to assume that it was not necessary for the jury to come to any conclusion with respect to the use that was to be made of the vessel by anybody, because if she was not in a condition fitted, furnished, and equipped, so as to come within that which a subject of this country is not allowed to do—if she was never intended to be put in that condition, then it did not signify at all what was the service for which she was ultimately intended. And I thought that the use that was to be made of the words "attempt," "endeavor," and so on, is this, that provided there was no intention of doing an act that was forbidden, what was attempted to be done would not be a violation of the act.

SIR HUGH CAIRNS. Of course not, my lord. There is no doubt that in the passage which your lordship has read the jury were told that it was not put to them, and that it was not necessary for them to consider what was the particular service that she was intended for. I shall presently call your attention to what was said in the latter part of the charge. But allow me first to refer, in support of the first of the propositions which I said were to be collected from this charge, to the bottom of page 229† and the top of 230‡. After referring to the authorities—to Justice Story and the Commentaries of Chancellor Kent, my lord says, "These, gentlemen, are authorities which show that where two belligerents are carrying on war, the subject of a neutral power may supply to either, without any breach of international law, and certainly without any breach of the foreign enlistment act, (and it does not say a word about it,) all the munitions of

* See page 129.

† See page 128.

war, gunpowder, every description of fire-arms, cannon, every kind of weapon, in short, whatever can be used in war for the destruction of human beings who are contending together in this way. Well, gentlemen, why should ships be an exception? In my opinion, in point of law, they are not. Presently I shall have to put to you the question of fact about the *Alexandra*, which you will decide. The foreign enlistment act it is now necessary for me to advert to, in order to tell you what is the construction which I put on the seventh section, which alone we have to do with on the present occasion." Then his lordship reads the title of the act and the preamble. Up to that point I submit to your lordships that it is perfectly clear that where his lordship speaks of ships he could not have meant—it would be absurd to suppose that he meant—furnishing, fitting, and arming; he speaks of ships being built as distinguished from whatever might be meant by equipping, furnishing, fitting out, and arming. It is made still more clear at the top of page 231,* where, after reading the words of the act, and those words especially "equipping," "fitting out," and "arming," his lordship says, "Now, with respect to the question of building, it is certainly remarkable that there is not a word said about it. It is not said that you may not build vessels for the belligerent power. There is nothing suggested of the kind, and clearly by the common law, and by the passages I have read to you, surely if from Birmingham either state may get any quantity of destructive instruments of war, and if from the various parts of the kingdom where gunpowder is made they can obtain any quantity of that destructive material, why should they not get ships? Why should ships alone be themselves contraband? that is to say, forbidden by the statute. It is perfectly apparent, and no person can contend for a moment that the jury misunderstood this matter; that where my lord spoke of the building of ships as not being prohibited, he meant to refer to the building of ships as distinguished from what might be meant by those other words, "equip, &c."

Now as to the second point; the view which was presented by my lord to the jury about the *Alexandra*, and her condition with reference to the seventh section, the passage my lord has read is the chief one which I meant to rely upon for that purpose. I mean that passage which begins below the middle of page 232; but I cannot help thinking, more especially when I find that the two reports do not agree, that there is a slight inaccuracy in one of the reports in part of that passage, which may affect the whole, as to which I will take leave to make my suggestion at the proper time. My lord says, "Now, gentlemen, I present the matter to you in another point of view. The offense against which the information is directed, is the 'equipping, furnishing, fitting out, or arming.' Gentlemen, I have looked, so that I might not go wrong, (as we have the advantage of having it here,) at Webster's American Dictionary, a work of the greatest learning, research, and ability. No one can complain that I refer to that. It appears there that to 'equip' is to furnish with arms. In the case of a ship especially it is to furnish and complete with arms. That is what is meant by 'equipping.' 'Furnish' is given in every dictionary as the same thing as 'equip.' 'To fit out' is 'to furnish and supply,' as to fit out a privateer. And I own that my opinion is, that 'equip,' 'furnish,' 'fit out,' or 'arm,' all mean precisely the same thing."

Now I stop there for a moment. There cannot be the slightest doubt that in one sense those four words do mean the same thing; that is, no person could doubt for a moment that to equip would include all equipments, and that equipment would be a *nomem generale*. It would be absurd to say that all kinds were not included in the term equipment. And certainly with respect to the term "arm," it is impossible to say that that would not be included in the other terms "equip," "fit out," or "furnish," if it were necessary. There can be no doubt that each of the three words first mentioned would include and comprehend in their extent the fourth term, to "arm." Then it concludes, "I don't mean to say that it is absolutely necessary, (and I think that the learned attorney general is right in that,) it is not, perhaps, necessary that the vessel should be armed at all points." Now, with regard to that, I cannot help thinking that it is not quite an accurate report by the short-hand writer, because in our report it is a little different. This is printed from our short-hand writer's notes, without any correction. We do not pledge ourselves to one more than the other. At page 245 in the small copy, three or four lines lower down, after speaking of the equipping, fitting out, and furnishing, the learned lord chief baron is made to say, "I do not mean to say that it is absolutely necessary, (and I think that the learned attorney general is right in that.)" That is one sentence. "It is not, perhaps, necessary that the vessel should be armed at all points, although it may be that the case cited from 6 Peters's Reports by the learned attorney general somewhat late in the day is a case where the jury found that the vessel was actually fitted out." Now, inasmuch as we find immediately afterward that the learned lord chief baron takes distinct notice that the *Alexandra* was not armed at all, but that still there was a question to be submitted to the jury notwithstanding that, it seems to me perfectly obvious that just a word or two has dropped out from this sentence.

MR. ATTORNEY GENERAL. Oh!

SIR HUGH CAIRNS. My friend is very fond of interrupting by a sneer or a laugh, but

* See page 123.

† See page 139.

I venture to think that it would be better he should hear what I have to say upon the point, and reply in a more decorous form at a proper time. My lords, I venture to think that it is a fair and just conclusion from the whole of this passage, taking notice, as we do, that the lord chief baron pointed distinctly the attention of the jury to this, that the *Alexandra* was not armed at all, but that yet the question was for them whether there was or was not an intention of equipping, fitting out, and furnishing; I say it is to my mind reasonably clear that he must have said this—I don't mean to say that it is absolutely necessary she should be armed, and it is not necessary that she should be armed at all points. Because otherwise there would have been an end of the case. There would have been nothing to leave to the jury. If my lord had meant to say, It is not necessary that she "should be armed at all points;" implying that it is necessary she should be armed to a certain extent; and if the moment afterward he went on to tell the jury it is admitted that she was not armed at all, but it is for you to say whether there was an infringement of any of those other words which occur in the act of Parliament.

MR. BARON CHANNELL. What did the lord chief baron treat as the finding of the jury in that American case which was referred to?

SIR HUGH CAIRNS. There were no arms; the ship was not armed in the Quincy case. She had equipments and fittings out of a warlike character, but not arms.

MR. BARON CHANNELL. You read the lord chief baron's observations as amounting to this: "If the jury find the vessel was actually fitted out," and then adding the words "though not armed at all points."

SIR HUGH CAIRNS. She was fitted out of course with the fittings which the report of that particular case shows were on board.

MR. BARON CHANNELL. If the lord chief baron says, "It is not necessary that the vessel should be armed at all points," he is speaking of some amount of armament; and the case which was cited somewhat late in the day is a case where the jury found that the vessel was actually fitted out, though not armed at all points.

SIR HUGH CAIRNS. Though not armed or armed at all points, is how I understood the lord chief baron to put it. I apprehend there is an alternative. In his lordship's allusion to that case he first presented to the jury what might be his own view of this verbiage, "equipping," "fitting out," &c., but which it was not necessary to lay down to the jury as the law. But, then, says my lord, I do not mean to lay that down to you, nor do I mean to say that it is necessary she should be armed, or armed at all points; neither one nor the other. Then what is the question that I should leave? His lordship makes it clear, because he goes on to say, "The question is, whether you think that this vessel was fitted; armed she certainly was not." But if his lordship had meant to say, All I can tell you is that she need not be armed at all points, but must be armed somewhat, there would have been nothing to leave to the jury at all. Whereas my lord goes on to say, "The question is whether you think she was fitted; armed she certainly was not; but was there an intention that she should be furnished, equipped, or fitted out at Liverpool?" That clearly shows that he meant to put it in contrast with the arming, if it was necessary to separate the one from the other.

MR. BARON BRAMWELL. It strikes me that the other side would not agree to what you say, that there was an end of the case if arming were necessary. Because, supposing it was necessary to arm; if it were intended to arm partly at Liverpool, it would be within the act of Parliament.

SIR HUGH CAIRNS. But the lord chief baron does not say that.

MR. BARON BRAMWELL. I understood you to say that if the lord chief baron had laid down that more or less of arming was necessary there was an end of the case, inasmuch as there was no actual arming at all. I say that that would probably not be agreed to, for this reason, that if there was an intention to arm, and they were preparing the ship to receive arms, that would be enough.

SIR HUGH CAIRNS. But your lordships should be good enough to bear in mind the statement of the attorney general in reply. He had virtually—indeed, I may say, literally *in verbis*—conceded the question of any intention to arm.

MR. BARON BRAMWELL. Did he do so?

SIR HUGH CAIRNS. Oh yes, my lord; that was perfectly understood.

MR. BARON BRAMWELL. I was not aware of that being the case.

MR. ATTORNEY GENERAL. I distinctly differ from my learned friend.

SIR HUGH CAIRNS. I expect that my learned friend will "distinctly differ" with everything he has heard me say from beginning to end.

LORD CHIEF BARON. Is there anything in the whole information that charges arming at all, or anything about it?

THE QUEEN'S ADVOCATE. No, my lord; nothing at all.

SIR HUGH CAIRNS. No, my lord; there is nothing about arming or about an intention to arm.

MR. BARON BRAMWELL. As I understand, you say that my lord told the jury that it was not necessary that the vessel should be armed, and that had he said otherwise, or been of a different opinion, that it was necessary that she should be armed, that that

would have put an end to the case. Now I do not think it would; because, although the statement in the information is "furnish," "fit out," and "equip," and there is nothing about arming, yet if furnishing, fitting out, and equipping may take place where there is a partial arming, then although no actual arming had taken place, yet if they were attempting to do that, the offense would be in the intention.

SIR HUGH CAIRNS. The act of Parliament does not say "intend," it says "an attempt to arm,"—that is an act, and there is no such act alleged in the information. There is no attempt to arm alleged in any part of the information from the beginning to the end. I do not believe that the word "arm" occurs in the information in any count.

Mr. BARON BRAMWELL. No, it does not.

SIR HUGH CAIRNS. I believe we are all agreed about that; therefore I say, my lords, that the lord chief baron, leaving to the jury this question, "Was there an intention that she should be furnished, or fitted out, or equipped at Liverpool?" left exactly the question which under the act of Parliament ought, in our view of the case, to be left to them, and that although my lord did say that in his opinion there would be ground to argue that those four words meant to signify the same idea, he did not so put it to the jury. He receded, for the purpose of the question he was going to put to the jury, from any view of the law of that kind, and adopted the view indicated in the American case cited by the attorney general. He made it perfectly clear beyond the wretched criticism, (which probably as we heard it on the motion for the rule will be repeated here,) that the jury believed, or imagined, that the lord chief baron was saying, "If you are of opinion that there were no arms on board, there is an end of the case, and you must find a verdict for the claimant and not for the Crown." Now as to the character of the equipment which must be on board, to which, throughout the whole of his charge, his lordship must have been taken to have been pointing, your lordships will find it very clearly laid down, and it is not necessary that the learned judge should repeat in every sentence what he has before stated. At the bottom of page 230,* your lordships will find this: "Now, gentlemen, the question that I shall propose to you is this, whether you think that this vessel was merely in the course of building for the purpose of being delivered in pursuance of a contract, which I own I think was perfectly lawful; or whether there was any intention that in the port of Liverpool or any other English port (and there is certainly no evidence of any other) the vessel should be equipped, fitted out, and furnished or armed for the purpose of aggression? That is the question." Pointing clearly to the character and object of the equipping, furnishing, fitting out, or arming, as the case might be. My lords, still further upon that point you will find at page 233,† what will at the same time support what I call my first proposition, and also the fourth. Your lordships will find about ten lines from the bottom of page 233, after speaking of the evidence of Captain Inglesfield, my lord says: "In short, what he makes out is, that she might have been built for a yacht, or might have been built as a vessel capable of being convertible into a war vessel. But the question is, was there any intention that in the port of Liverpool, or in any other port, she should be, in the language of the act of Parliament, either equipped, furnished, fitted out, or armed with the intention of taking part in any contest?" Now, my lords, I say that that is the larger proposition which I took leave to submit, we on the part of the claimants might have demurred to, but which the Crown certainly cannot object to. It is quite true that my lord, as he said just now, told the jury that he did not mean to trouble them with the question of what particular service she might be intended for, but here is a question which includes the other, a much larger and much more intelligible question which was left to the jury. Is it your opinion that in the language of the act of Parliament, she was intended to be "equipped, furnished, fitted out, or armed with the intention of taking part in any contest?" Well, if she was not armed, equipped, furnished, or fitted out with the intention of taking part in any contest, *a multo fortiori* she could not have those things done to her with the intention of being employed in the service of the confederates to cruise and commit hostilities against the United States of America. It seems to me beyond the possibility of controversy that this larger proposition to which I say we might have objected includes in it the minor proposition which the Crown complains was not found in the charge of the chief baron.

Now, my lords, I therefore submit to your lordships that the charge looked at in this way will be found in substance to have directed the attention of the jury to everything which ought to have been laid before them as matter of law, and to everything which ought to have been put to them as the issue of fact to be decided between the parties. And, my lords, I feel satisfied that both according to your lordships' practice in all actions which are tried in this court, but I might say more especially according to the immemorial practice in actions which are of a penal character, or actions involving a forfeiture, if your lordships find that this case has been tried in a manner which has produced a result satisfactory to your lordships' mind on the law and on the evidence, your lordships will not enter into any minute criticism upon the words of the charge, but will rest satisfied with the manner in which the verdict was given. I submit with

* See page 128.

† See page 130.

confidence that on the evidence which I have taken the liberty of commenting on, it is utterly impossible to say that a jury was not warranted, and thoroughly well warranted, in coming on the facts to the conclusion that they came to, and that evidence presented on the part of the Crown, was evidence that could not support the case which the Crown alleged and which the Crown attempted to prove.

Then I say, on the construction of the act of Parliament, the evidence as to the condition of the ship the *Alexandra*, and the evidence as to intention was evidence which shows clearly and distinctly that the *Alexandra* was neither equipped, furnished, nor fitted out, nor armed, nor was there any intention to furnish, to equip, fit out, or arm her, or any attempt to do any one of these things, within the port of Liverpool, or within any part of her Majesty's dominions. And I say let any person read the reply of the attorney general in this case, and it is utterly impossible to do otherwise than arrive at the conclusion that the Crown at that time thought they were not entitled to a verdict, and if your lordships are of that opinion, in substance the justice of the case has been arrived at. And certainly, my lords, I, on behalf of my clients, however interesting it may be to have points of law decided upon an act which has not been made the subject of discussion up to the present day, do trust that your lordships will not have those points discussed at the expense of my clients. I venture to say, and with confidence, that the Crown is bringing forward a case which is without precedent during the seventy years which have elapsed since the statute was made on this subject across the Atlantic—which is without precedent during the forty years in which we have had a similar act of Parliament in this country. I say it is impossible to suppose that if the law were as they allege it to be, cases would not have occurred again and again where seizures and forfeitures would have been made under the penalties of this act. I say the case they are bringing forward is against the history of legislation on this subject; it is against the true and sound construction of the act of Parliament on the subject; it is against the declarations which have been made by every one who has had the right to control the movements of the Crown, or to direct or advise the movements of the Crown, in putting this act into execution from the time when the act first attracted public attention. And I trust that your lordships will think that the litigation we have had in this case is enough; that full, perfect, and complete justice has been done between the Crown and these claimants on a statute of this kind; and that your lordships will be of opinion that there should be no further litigation in this case.

Mr. BARON CHANNELL. Will you let me see for one moment the smaller copy of the short-hand writer's notes.

Mr. KARSLAKE. My lords, it will be convenient for me, in showing cause against this rule, to follow, to some extent the course which my learned friend, Sir Hugh Cairns, has adopted, and to consider in the first place, what is the construction to be put upon the statute upon which this information has been filed; what the evidence has been in this case, and what the charge of the learned lord chief baron was to the jury, which is now complained of. I cannot help thinking, that as far as the second point goes, namely, what the evidence was in this case, and what was the effect of it, that the motion of the attorney general was rather directed to this; not that the verdict was against evidence, as the case was left to the jury, and according to the lord chief baron's view of the law; but assuming his lordship's ruling to be wrong, that the evidence would have supported the verdict, in the event of the ruling being as my learned friend, the attorney general, wished it to be. If that is so, it seems not necessary to argue at any length the question, whether the verdict was against evidence or not. The question, therefore, resolves itself into this, whether there had been a misdirection on the part of the learned chief baron.

Mr. BARON BRAMWELL. I assume that all the attorney general would say would be this, that assuming my lord left the case to the jury, as the Crown says it ought to have been left, namely, that any equipping or fitting out would be within the act of Parliament, although it was not a warlike equipping; that then the verdict was against the evidence. I suppose that to be what the attorney general would say.

Mr. KARSLAKE. Yes, my lord; so I rather assume from having had the advantage of hearing a great portion of his address to the court when the rule was moved for. I apprehend that that is not a verdict against evidence. I did not understand the learned attorney general to say that, assuming the lord chief baron laid down the law, as we say he did, there was not ample evidence to support the view of the law he laid down; but I understand him to say, he will first of all contend that the lord chief baron was wrong in his view of the law, and then, assuming the view presented of the law to be correct, that the evidence supported that view.

Mr. ATTORNEY GENERAL. It must not, of course, be forgotten that I took a certain view of what the lord chief baron laid down which may possibly turn out not to be correct, and supposing that view is not correct, then I adhere to my motion on the ground of its being against evidence.

Mr. KARSLAKE. Then, my lords, it may be necessary to go a little more at length into the evidence of the case to show that it would warrant the verdict given. At all

events, upon that part of the case, we have the information that my friend in some view or other considers that the verdict was not warranted by the evidence given in the cause, and upon that ground he asks for a new trial, that is, on the ground that the verdict was against evidence; and he also states that there has been misdirection on the part of the learned judge, and he is allowed to adopt a course which is not allowed to be adopted generally by other litigants in this court, namely, to state simply that there has been misdirection, and by and by to contend that there has been such misdirection without at present at all informing his opponents what the misdirection is. Therefore we are left to consider what is the law, and whether his lordship was right in his view of the law, without any assistance from the terms of the rule as to what my friend says the lord chief baron directed, and what he ought to have directed under the circumstances of the case. My lord chief baron has said that with the view of construing this act of Parliament, and especially the seventh section, it is extremely important to see what might be done before this statute was passed. After the full history of that which led to the passing of this statute, which has been gone into at such length by my learned friend Sir Hugh Cairns, I will trouble you very little indeed upon what took place in America, or upon what took place in England, before this statute was passed. But, my lords, I think that I may call attention to an authority which is earlier even than the authorities of 1793, to which my learned friend called attention, (and which will be found in Fortescue's Reports, at page 338, curiously enough under a discussion by the judges as to the precedence, &c., of the judges:) the *dictum* as to what had been the advice given by the judges in the House of Lords, as to the right of building ships of war for foreigners in this country; and it appears to me extremely important for the purpose of ascertaining what was declared as long ago as 1713, and again in 1721, to be the opinion of the judges as to the right of fitting out for foreign nations ships of war in this country. At page 338 your lordships will find the following passage: "In Michaelmas vacation, 1721, the judges were ordered to attend the House of Lords, concerning the building of ships of force for foreigners, and the question the lords asked the judges was, whether, by law, his Majesty has a power to prohibit the building of ships of war or of great force for foreigners, in any of his Majesty's dominions? And the judges were all of opinion (except Baron Montague, Chief Justice Pratt delivered the opinion) that the King had no power to prohibit the same, and declared that Montague said he had formed no opinion thereon. This question was asked on occasion of ships built and sold to the Czar, being complained of by the minister of Sweden; Trevor and Parker gave the same opinion in 1713." Therefore there is the opinion given by the judges that the Crown could not interfere to prevent ships of force being fitted out with warlike equipments, in this country, for foreigners, at all events in the years 1713 and 1721.

Mr. BARON BRAMWELL. What are we to understand by that, that the judges thought that the expedition might be fitted out to invade the territory of the Czar?

Mr. KARSLAKE. That his Majesty had no right to stop the sailing of those warlike ships, for the purpose of being engaged in war with foreign belligerents. That was the opinion of the judges upon that point.

Mr. BARON BRAMWELL. There was no process to stop them, there was no process by which the Crown could have stopped them from proceeding, was there?

Mr. KARSLAKE. That question was, I suppose, submitted to the judges at the same time. The question was whether the subjects of this country could be prevented from selling warlike ships to foreign nations at war.

LORD CHIEF BARON. I dare say you are aware that the last time the judges were assembled for the purpose of having a question put to them in that general way, without argument on either side, one of the most eminent judges that ever occupied a seat on the bench of English judicature refused to give any opinion at all—I mean Mr. Justice Maule—and he said that unless the matter was argued before him, so that he might know what was to be said on the one side or the other, he should decline giving any opinion. I apprehend that it is very unlikely that a question of that sort ever was argued.

Mr. KARSLAKE. Very possibly.

Mr. BARON BRAMWELL. We are summoned by our writs to advise the House.

Mr. KARSLAKE. I believe at the time it was the common practice for the judges to give information to the Crown when asked.

LORD CHIEF BARON. Not only in the House of Lords, but it was not an uncommon thing, you will find, for the judges to be assembled for the purpose of giving an extra-judicial opinion. They were assembled once upon the question of the right of the sovereign to control the whole of the royal family, and as to giving him during the lifetime of the Prince of Wales a control over the Prince of Wales. He was considered to be the father of the royal family. The judges, certainly not in the House of Lords, but at Serjeant's Inn, were assembled, and gave an opinion, and they have been in the habit of doing it upon other matters of state.

Mr. KARSLAKE. My lords, I cited that passage as showing the opinion of the judges, and as a declaration, therefore, as to what was considered to be the law at that time, at

a date prior to that of the first authority which was cited by Sir Hugh Cairns, namely, the resolutions or rules which were come to in 1793, and to show that before that time the question had been considered here, and that that considered opinion had been given by her Majesty's judges upon the subject. My lords, for the first time, in the year 1794, the American government passed an act of Congress for the purpose of making certain provisions as regards the equipment of ships, and I am not going to trouble your lordships with the history of those resolutions that were come to and the rules that were laid down, because your lordships have the rules before you, and can see what, according to the view entertained by eminent men at that time, was considered to be the extent of the prohibition, and what were the rights of neutrals in supplying ships and equipments to belligerents. Now, my lord, it was not thought worth while in England to interfere in any way by statute until the year when this act was passed, at least so far as ships were concerned, and although this is now called the foreign enlistment act, certainly so far as ships, which are mentioned in the seventh section, are concerned, it is a most inappropriate title, because there is no question that it has retained the name of the foreign enlistment act from the circumstance that by it a slight alteration of existing law as regards subjects entering the service of foreign powers was then made, and that these sections as to ships found their way into that act of Parliament under circumstances which have been referred to by my learned friend, Sir Hugh Cairns. Now, my lords, what were those circumstances? Because it is not immaterial to see what gave rise to the necessity for municipal legislation on this subject. Undoubtedly, when one looks at the debate which has been referred to it will be found that by far the most important consideration at that time was the amendment of the law as to foreign enlistment. But, then, it was thought expedient also to put a stop to that practice which was existing in this country at the time when this act was passed, namely, of expeditions being organized by the subjects of this country, who sailed from its shores in the ships fitted out here for the purpose of taking part with one or other of the belligerents. It was under those circumstances that, when the foreign enlistment act of 1819 was passed, these new sections, providing against the equipment of vessels, were included in it; and, my lords, I think that anybody who reads the preamble of the act, without going further, without looking at the section which has been so much commented upon, would say that, beyond all doubt, so far as the preamble discloses the object of the act, the main purpose was to prevent his Majesty's subjects from engaging in war on their own account; because we find that the first part of the preamble relates to the enlisting by any persons of her Majesty's subjects; and the second part of the preamble clearly refers, or appears to refer, to the arming of vessels by her Majesty's subjects for the purpose themselves of carrying on warlike operations. It says: "Whereas the enlistment" (that is, as I understand, by any one) "or engagement of his Majesty's subjects to serve in war, in foreign service, without his Majesty's license, and the fitting out and equipping and arming of vessels by his Majesty's subjects without his Majesty's license, for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising, or assuming to exercise, the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid, or their subjects, may be prejudicial to, and tend to endanger the peace and welfare of this kingdom."

Now, my lords, as far as the former foreign enlistment acts were concerned, namely, the act of the 29th of George the Second, and the 5th George the Third, and so far as this act in dealing with enlistment is concerned, the main purpose is to prohibit the subjects of the Crown from taking service under foreign powers. The acts are directed to the purposes of keeping those subjects within their own allegiance, and of preventing them giving up that allegiance by entering into foreign armies. But when we come to the sections relating to the equipment of vessels, I think you will find that they have been framed with reference to those rules of the law of nations which have been laid down, and which have been recognized in this country, and which were perfectly well known as being the law of nations existing at the time the act passed. Let me call your lordships' attention to some considerations as to what was permitted in the year 1819 at the time of this act of Parliament passing, and without enumerating all the things that might be done by a ship-builder in this country, it is sufficient to say that my friends who argue on the other side will not deny that it was quite open to a ship-builder in this country in the year 1819, and it is now open to him to sell a vessel fully equipped and armed, under a contract and as a commercial transaction, to a belligerent, that ship sailing perfectly complete and armed from these shores, and I say, that that was a case which might have occurred, and which, probably, did occur before the time that this act passed, and which advisedly has not been interfered with by the act now under your lordships' consideration. Moreover there were many other cases which my learned friend, Sir Hugh Cairns, has adverted to, in which ship-builders in this country or any other country, according to the law as declared by Washington, had a perfect right to enter into commercial transactions as regards ships, although beyond all doubt

by so entering into those commercial transactions they might strengthen the hands of the belligerents, and might cause a considerable degree of irritation in the minds of one or the other of the powers engaged in war. But that was not intended to be prohibited by this statute, and that which did lead to the passing of the statute was, beyond all doubt, this: that ships of war were, in the year 1819, being fitted out and armed and manned by British subjects, and were sailing from these shores for the purpose of taking part in hostile expeditions against other states. It is under these circumstances that the act was passed. It would certainly appear that the object of the statute as declared by the preamble was to prevent his Majesty's subjects from themselves taking part in warlike operations, in vessels fitted out by them and sailing from our ports. Of course I do not contend that the preamble of the statute may not be explained, controlled, or enlarged by the language which one finds in the subsequent sections, and I shall have occasion to consider what the real meaning of the language of those subsequent sections is, but undoubtedly in approaching the consideration of the question, it is absolutely necessary to find out and discover, to some extent at all events, what the law allowed the subjects of a neutral power to do, before we ascertain what the object of this act was, and what they were to be restrained from doing by the seventh section of the act. Now, when we come to the seventh section of the act, we find that words are used there which are not found in the preamble; and I only notice this because Mr. Baron Bramwell seems to have considered that there was some weight to be attached to the word "furnishing," found in the seventh section, which carries it beyond the words "equipping," "fitting out," or "arming," which are also to be found in that section. My lords, in the American act, which it was said was the precedent for this act, you will find that there was no preamble at all to assist in guiding the consideration of what really was intended to be prevented. The words found in the third section of the act of Congress, which is said to be the precedent for the act of 1819, the only words are "fit out and arm, or attempt to fit out and arm, or procure," and so on, or "knowingly aid and assist in arming any private ship or vessel of war or privateer, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property," and so on. My lords, the seventh section is not, therefore, an accurate copy of that section. Now, since this statute has passed, as my friends admit, and as is proved by the American authorities, as well as by the authorities which are found in Kent's and other works which my learned friend has cited, it is still allowable for the subjects of this kingdom to fit out and arm, that is, complete, arm, and equip a vessel, which they may send to a foreign belligerent, asking that foreign belligerent when the ship reaches either his ports or any port out of the United Kingdom, to purchase that vessel, the ship-builder knowing as a moral certainty at the time he so equips and arms her and sends her from these shores that the vessel will be purchased, and be used when purchased, for the purpose of carrying on hostilities. However, that is not forbidden by this statute. There is another case that might have occurred, and possibly has occurred during the very war now going on, and it would not be a prohibited transaction in any sense; you may send out a vessel, or even deliver a vessel in this country fully armed if the intention of the party receiving be not at once to commence hostilities, but to use the vessel as a model for the purpose of fitting up ships of war in his own country or elsewhere, in order that those ships may be used by the belligerents for the purpose of hostilities, and that is not prohibited by the statute. The legislature were no doubt prohibiting that which might be done at the time to some extent, and the question will be for your lordships to determine to what extent the undoubted right which the ship-builder in this country had of supplying, as contraband of war, ships of war to foreign belligerents, has been interfered with by the restriction put upon him by this act. As regards guns, cannon, shot, gunpowder, and other munitions of war there is no prohibition by statute, and those contraband articles may still be sold and carried, subject to confiscation, to a foreign belligerent. There is a restriction to some extent put on the ship-builder, and it is a restriction which had not been imposed on other persons carrying on business in other branches of trade, such as in guns, and my learned friend, the attorney general, asks, as I understand in this case, that, instead of your lordships putting a strict and narrow construction upon this statute, which is a highly penal statute, the widest possible construction shall be put upon it, and that the moment anything is done which, in its nature, tends in any way to render a ship adaptable even to the purposes of war, that that ship shall be at once forfeited in consequence of its being equipped within the meaning of this seventh section. My lords, the question was put by my lord to the late learned attorney general, Sir William Atherton, who conducted this case at the trial during his reply to the jury, whether it was or was not an offense at the present moment according to his construction of the act for a ship-builder to build a ship which had no equipment of a warlike character of any sort or kind, intending at the time that he built that ship that it should be afterward used for warlike purposes. But although my lord pressed the then learned attorney general to give him his view on the subject, Sir William Atherton expressly refused to do so, and as I understand my friend the attorney

general, he declines to give any opinion on that subject, although the same question was put to him in the course of his motion for this rule. I shall assume, however, that, supposing the hull of a vessel, which is capable of being used for warlike purposes, after it has been made complete and has been equipped and fitted out, is sent from this country to a belligerent with the view of its being used for such purposes, but is towed away as a mere hull, inasmuch as there is no prohibition of such an act to be found in this statute, that the act of sending away a vessel in that stage of construction is not unlawful. I say that it is contemplated that there should be something more than a vessel which is to be the subject of forfeiture. It must be a vessel in a particular state and stage of completeness; that is, not simply the hull of a ship, but a vessel furnished, equipped, fitted out, or armed, which is to be the subject of forfeiture under the seventh section. Then, if the law be as I have ventured to state it to your lordships, that a ship-builder has still a right, in common with other merchants in this country, to supply the contraband article in which he deals up to a certain point, the question is as to where your lordships will draw the line, and whether your lordships are to give to the statute the extremely wide and sweeping interpretation which the attorney general suggests, or whether the more limited construction which we seek to put upon it is the true construction to be placed upon this act of Parliament. And when your lordships consider that question, I venture to say that it is more consistent with the rules of construction adopted by this court and of other courts of law where a new offense is created by act of Parliament, where a particular branch of commerce which up to the time of passing the act has not been made unlawful is declared illegal—when to deal with ships under peculiar circumstances is made an offense and a misdemeanor, and the forfeiture of the vessel itself is to be incurred in the event of the act of Parliament having been infringed—I say that it is rather for your lordships to put a limited and strict construction upon the act than to extend it as wide as possible for the purpose of making every vessel built, or in course of building, to which circumstances of suspicion may attach, liable to the forfeiture which is claimed by the Crown. Now with regard to the ship that is declared to be liable to forfeiture under the seventh section, I think your lordships will find, that beyond all doubt the criticism I have made upon the section is well founded; that it is necessary not merely that the vessel should be in such a state as to be what may be called a ship, but it must be a ship which is equipped, or which there has been an attempt or endeavor to equip. I can hardly construe the language used by my learned friend when he moved for this rule, but I rather infer from what he said that he would admit for the purpose of this argument, at all events, that a vessel may be built with the intent which is mentioned in the seventh section, and that it is not forfeitable so long as there is no equipment and no attempt to equip, and nothing done toward equipment. I am not sure whether I understood that rightly, because the language of my friend was a little guarded; but I understood him further to say that at all events after the vessel had arrived at the stage at which she could properly be called a ship, as distinguished from a mere number of planks put together, any species of equipment, however innocent *per se*—(your lordships will find this at page 55*)—“any species whatever of furnishing, any species whatever of fitting out, whether with or without arming, is struck at by the act, by its plain words, according to their natural meaning, and is necessary; and that I apprehend is their object and policy, provided, always, that the intent and purpose is established.” Then I understand my friend to say this: Once let the vessel become, in common parlance, a ship, add to that vessel the stanchion of a hammock netting, she is then equipped sufficiently for the purpose of being brought within this statute, provided that that equipment is found to have been with the intent charged by the statute.

Mr. BARON BRAMWELL. That if you get clearly to the intent, that that gives the equipment a distinctive character.

Mr. BARON PIGOTT. First the act and then the intent.

Mr. KARSLAKE. Or it may be first the intent and then the act, for it is immaterial which you take first. The act declares that “if any person shall within any part of the United Kingdom, without leave or license, equip, furnish, fit out, or arm,” or “attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid or assist, &c., in fitting out, &c., a vessel with intent to cruise and commit hostilities, &c., such person shall be guilty of a misdemeanor.” Now, my lords, a question may arise, though I do not know that it is necessary to discuss it in the present case, as to what the real meaning of this section was as regards the persons liable to indictment for being engaged in fitting out a vessel for the purpose of committing hostilities. The question has been raised by the form of the indictment here, though it may not be necessary to consider it for the purposes of this rule, whether it is not necessary that the persons engaged in equipping shall themselves be intending to commit hostilities. I think when the whole of the act is looked at, that that may very likely be found to be the real intention of the statute; there are counts to meet that view, and that may be matter to be determined hereafter. We

find that the prohibition is against having a ship equipped, furnished, fitted out, or armed. Now, as regards the arming, it is admitted in this case that there was no arming at all, nor was the vessel equipped, nor furnished, nor fitted out for aggression; the utmost that can be said by my friends is this, that there was something *incipit* upon the vessel, which they say was intended to be thereafter used with additions for the purpose of forming part of a warlike equipment. And my friends put it that this furnished sufficient grounds, under the circumstances, for taking possession of the vessel. Beyond all doubt, the vessel was not completely furnished, fitted out, or equipped in any sense. Then my friend says that at all events he has now a right to allege that, if the vessel was not equipped, &c., there was an attempt or endeavor to equip, furnish, or fit out the ship with intent to cruise and commit hostilities. It becomes extremely material to ascertain who is to have the intent which must exist in order to make the vessel forfeitable; and, my lords, on that point I would ask your lordships' attention to the authority which has been already cited, the authority from the American courts of the United States *vs. Quincy*, and I will show that that decision was adopted to the fullest extent by Sir William Atherton, and must be taken to be the law applicable to this case. It is there said, "The offense consists principally in the intention," which "must be a fixed intention, not conditional or contingent, dependent on some future arrangements. The intention is a question belonging exclusively to the jury to decide." That was the decision of the question as to the form in which the instruction should be given. The instructions which were claimed on the part of the defendant in that case of the *Bolivar* were as follows: "That if the jury believe that when the *Bolivar* left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, she was not armed or at all prepared for war, or in a condition to commit hostilities, the verdict must be for the traverser. (2.) That if the jury believe that when the *Bolivar* was fitted and equipped at Baltimore, the owner and equipper intended to go to the West Indies in search of funds with which to arm and equip the same vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her to go to the West Indies, to endeavor to raise funds to prepare her for a cruise—then the traverser is not guilty." (3.) "If the jury believe that when the *Bolivar* was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to employ her, the fulfillment of which wish depended on his ability to obtain funds in the West Indies for the purposes of arming and preparing her for war, then the traverser is not guilty." Upon the second and third of these instructions so claimed, the decision was given in favor of the defendant.

Mr. BARON PIGOTT. I suppose that the owner and the equipper was the same person there.

Mr. KARSLAKE. I think he was the same person.

Mr. BARON CHANNELL. The court below seem to have thought that the intention was not only necessary but absolutely requisite.

Mr. KARSLAKE. No doubt, my lord. In order that there may be no doubt as to what the law, as it was laid down by Sir William Atherton, requires, I would ask your lordships' attention to the end of the reply, or rather the summing up by Sir William Atherton. Your lordships will find at page 223,* of the small book, the following passage: "Gentlemen, that brings us to the great question in the case with which my learned friend next dealt on the evidence. I mean the question of intent, because I have stated, and admitted throughout, that unless you are satisfied upon the evidence produced upon the part of the Crown that there did exist the intent—and I will very much adopt the view put forward by my learned friend as to the kind of person, with reference to the ship, by whom such intent must be entertained to fulfill the description of the intent; I shall come to that in a moment—but unless I satisfy you that the intent that the vessel should be employed by the Confederate States is made out, and an intent existing before the seizure and during the construction of the vessel, I have stated throughout, and I repeat, that the information fails."

Therefore my learned friend assumes that which I venture to think he was bound to assume, namely, that it rested upon him to show that there existed an intent on the part of somebody, who was capable of exercising and carrying out such intent, that this vessel should be used by one belligerent against another, and he says that the intent (which he admits must be a fixed intent) existed on the part of somebody (although he fixed on no person in particular) that the vessel should be used in the service of the Confederate States. At page 238,† of the little book, Sir William Atherton goes a little more at length into what he considers to be the law as regards the intent: "All that I ask you to do is this: You will take the law, as far as it affects your decision, of course from my lord; the facts you will judge of on the evidence, no doubt availing yourselves of such observations on these facts as the great experience and knowledge of my lord will suggest to him, or enable him to make available to you. I ask you to give your conclusion in this case on the evidence, and I will state at once what I intended to have stated a little earlier that so far I agree with my learned friend, that

* See page 118.

† See page 126.

the intent must be an intent of one or more having at the time the means and opportunity of forwarding or furthering such intent by acts. I agree that anything else called an intent, or rather that which would be called an intent in the mind of any person not of this description, must be treated properly as a mere wish, imagination, or desire. By intent, undoubtedly, the act means practical intent." Therefore, that is the construction laid down by my learned friend at that time, and I believe that my learned friend, the attorney general, now adopts it, because in moving for this rule I think I understood him to say—

Mr. ATTORNEY GENERAL. I do not recede from that, and I could not express it better.

Mr. KARSLAKE. I think I understood him to say, what your lordships will find at page 55,* "That there must be some person party to the business who is capable of having such an intent, and who is it? For example, if a ship-builder in England builds on speculation on his own account a ship, intending to take it to any port in the world where he can find a market for it, it is obvious that he has not within her Majesty's dominions any intent to employ, or any power to employ, the ship in the service of any belligerent power; all his intent is to sell the ship to a purchaser somewhere or other; or it may be in some particular place, if he can find one there, and nobody but himself has any control over it at the time. Nobody but himself has anything to do with it at the time. Nobody but himself under the circumstances can determine the intent, and, as he does not mean to make war in it himself, or does not intend that any one else shall make war in it, that is not struck at by the statute. But wherever you have parties concerned in the equipping or fitting out or furnishing, or the attempting or endeavoring to do any of these things, either as ship-builders or as engineers, aiding in any way whatever in any of them where there is a principal in the matter who has the intent, and is master of the employment, can there be any doubt whatever that it is struck at by the statute? For instance, suppose they constructed the vessel meaning themselves to use their own ship as a privateer." Now, therefore, I have my friend's own statement: it is necessary here to fix upon some person or another in whom the intent existed.

Mr. BARON FIGOTT. There is no doubt that the intent of the two parties must be used in a different sense; the intent of the controlling power may apply to the principal; but then there is an intent also in the person who is aiding and assisting, and he has no controlling power, but he has the knowledge.

Mr. KARSLAKE. It will be found extremely material to discover what the real meaning of "with intent" is for the purpose of this case. I contend that it is incumbent on those who seek to claim the forfeiture of a vessel to point out some particular person who has the control of the vessel, who was the person *intending* at the time the acts, which are charged as wrongful acts, were done. Your lordships have been good enough to suggest that two sorts of intent are referred to here. I do not think it will be found to be so. The intent must exist in those who are "aiding or attempting to equip," as well as in those who equip.

Mr. BARON CHANNELL. I understood the attorney general to contend, upon his moving for this rule, that there must be, not only an intent, but coupled with it some power to carry that intent into execution. But with regard to those who aid or abet, then it is not necessary that they should have the power. The words are "with intent or in order." No one has referred to those words yet.

Mr. KARSLAKE. Is it not intended by the act that any person aiding in equipping a ship shall be liable to be indicted as a misdemeanant, unless the vessel has become liable to forfeiture?

LORD CHIEF BARON. That is so, no doubt; but put such a case as this: I do not imagine that any one would contend that if any of the ship's carpenters, or persons who are merely inferior workmen, but still who are aiding, assisting, or advancing the work, that any intention on their part would be an offense against the act, or make them liable to punishment, or incur forfeiture.

The ATTORNEY GENERAL. No; if that stood by itself, of course not, if there was no other intention.

LORD CHIEF BARON. Even all our special pleading, and all our care about indictments upon acts of Parliament, language is extremely imperfect, unless you carry along with the perusal of it, and the attempt to understand it, a candid and fair desire to know what it means.

Mr. KARSLAKE. Yes, what I want to impress upon the court is this, that on the part of the person who is the owner or controller for the time being of the vessel, there must be that fixed intention which is mentioned in the case of the United States v. Quincy, and which is adverted to by Sir William Atherton in his speech; and that you must ascertain who is the person who has that fixed intention, before you can claim the forfeiture of the vessel. It will be extremely material to bear that in mind when you find, as in this case, there are twenty or thirty persons charged with having said this or that about the vessel, and when my friend the attorney general says, "They were all engaged together, and therefore you must assume the intent to be what we

allege it to be." I can suppose a case where the person may be guilty of an intention, and yet where no forfeiture of the vessel would be incurred. I will take this case—supposing every workman in Mr. Miller's yard at the time the vessel was being built was working upon the vessel with the firm belief that it was going to the Confederate States, and it turned out in evidence, upon their being indicted under any one of the alternatives of this section, that there was no such intent on the part of the person who had the control of the vessel. I say in that case they were not assisting with intent at all. Therefore it is most important to ascertain who is the person on whom my learned friend lays his hand, and says, This was the person who was the owner or controller of the vessel, and the person who I allege had the intent which renders the vessel liable to forfeiture, because the sole question is aye or no; is the vessel forfeited? And that was the question to be left to the jury. It was not a question as to whether certain persons were making observations from time to time which might tend to implicate them in the event of there being an indictment against them; but the question was really whether the Crown had satisfied the jury that there was a person who had the control at the time of the vessel, who had himself formed the fixed intention in what he did on the vessel of using the vessel for hostile purposes in the service of the Confederate States against the northern States of America.

Mr. BARON BRAMWELL. I am sure you would not labor this point, Mr. Karslake, unless it was of some importance; but do I understand you to say, supposing in this case the order had been given to Fawcett and Company to build the vessel and equip her, in order that she might cruise; they might say, and truly enough, we do not care what is done with her. We shall deliver her to the person who gave the order, and who has a right to the ship. But suppose they were making her in pursuance of an order given so that she might cruise, do I understand you to say that the ship would not be forfeited?

Mr. KARSLAKE. I am not sure; that is not this case.

Mr. BARON BRAMWELL. I thought there was some tolerably clear evidence that whatever was true of those who gave the orders to the ship-builders was true of them.

Mr. KARSLAKE. No; when you come to look at the evidence your lordship will find that they are statements made by the builders and not by those who come forward to claim the vessel, and who for the purposes of this case were admitted to be the owners, laying claim to the vessel. The statements were made by Miller, the builder, and Fawcett and Company had nothing to do with those statements.

Mr. BARON BRAMWELL. This is the first case of a similar description that I ever met with. I don't mean under the foreign enlistment act, but the first case of the kind. As I understand it, the Crown, by information, claimed the vessel as being forfeited. A B comes in and says the vessel is mine, and is not forfeited for the reason alleged; but surely A B can have no right to say, You must give no evidence except that which is said to be evidence against me. Surely the Crown has a right to say, if we cannot make our right against any one, we are content, the ship shall be yours; but if we can show that any one has forfeited it, we have a right to do so by all ordinary means in our power.

Mr. KARSLAKE. Yes; it may not be material who comes in for the purpose of claiming the ship. Still it is necessary that the Crown should lay their hands on some particular person in whom they assume the guilty intention existed which has rendered the ship forfeitable.

Mr. BARON BRAMWELL. As I understand, it is matter of right for any one to come in to make the claim.

The ATTORNEY GENERAL. Yes; and no verification is required beyond the affidavit of the attorney that he believes his client to be the owner at the time of the seizure.

Mr. KARSLAKE. It does not affect the question the least in the world. The simple issue is aye or no, is the vessel forfeited? That is the question which is raised. Then I say that for the purpose of showing that the vessel is forfeited, it is the bounden duty of those who are making out the affirmative to show that at the time when they say the forfeiture was incurred there were some particular persons who were acting in some way or other against the provisions of the statute, who had the power of directing and controlling the movements of the vessel, and who had that guilty intention which it was necessary should exist. Supposing Mr. Bullock was saying this, or Mr. Hamilton was saying that, about this vessel, and the person in whose yard the vessel was, was saying something else about it; all that goes for nothing until you have fixed on some person who was the owner or controller of the vessel, and found that he had the guilty intention.

Mr. BARON FIGOTT. If the man who had given the order for it had said it, what would you say then?

Mr. KARSLAKE. Was he in this country or not? I don't know where he is supposed to be.

Mr. BARON FIGOTT. Supposing it was proved that A B gave the order and said: "I mean it for the Confederate States."

Mr. KARSLAKE. It might be evidence; but I must ask in what way the question would

rise. The admission of any one person might be evidence as an admission in the event of there being an indictment against him. But I want to draw your lordships' attention to the form in which this question is tried. The form is whether there is forfeiture or not. If there be an indictment against any person for knowingly aiding and assisting, and he chooses to say, "I did knowingly aid and assist the person who had the control of the vessel, and I did intend to send it out to commit hostilities to assist a foreign government," it may be very good evidence against him personally, by his own confession upon an indictment for misdemeanor. But what I desire to insist on is this, that the first step the Crown must take, according to my construction of the section, is to fix on some one who, at the time they allege that the forfeiture was incurred, was the person who had the absolute control over the vessel, and then to show that in his mind that guilty intention existed which renders the vessel liable to forfeiture. That I say is involved in the question of intent; because when you find here the words, "with intent to cruise or commit hostilities," it seems to me obvious that looking at the person who is to intend, as defined by the authority which has been cited, and as admitted by my friend, the first step in the case of the Crown is to ascertain the person or persons, who, having the control of the vessel, had formed this fixed intent, and then to show that that intent was formed under such circumstances as that the vessel was liable to forfeiture. Therefore, my lords, the first question to be decided in this case, before we go into the question at all as to whether there was any fitting or equipping of the vessel, will be as to the true construction to be put upon this section as regards the intent in a proceeding of such a description as this, where the forfeiture of the vessel is claimed. And I say if the vessel had been fully equipped and armed that it would be important to look first at the question of the intent, because, however fully equipped or armed the ship might be, unless the intent was shown to exist, the Crown could make no case. In order to ascertain whether the intent existed, the first inquiry to be made was, who was the person who was capable of intending, within the meaning of the authorities on the subject, at the time of the forfeiture?

Mr. BARON BRAMWELL. Let us understand. Ship ordered to be built. Orderer intending, when he has got it in his possession, to commence hostilities with it against the act of Parliament; builders knowing it to be for that purpose.

Mr. KARSLAKE. The case your lordship puts may happen.

Mr. BARON BRAMWELL. There is the intent, and the intent in either of those minds, would do. That would be sufficient would it not?

Mr. KARSLAKE. Yes, shown as a matter of fact, that there is intent in the person who has control.

Mr. BARON PIGOTT. How can you get at the intent except by the acts?

Mr. KARSLAKE. That is what I want to contend against in this case. It is not because Miller, or somebody in his yard, says "this is my intent," that that statement is to fix guilt on the person who alone has the power of intending. Some one must be fixed upon as being the person who has the power of intending.

Mr. BARON BRAMWELL. I should say that if the defendant could properly have got into the witness-box, and said that he stipulated that they should not have the vessel unless they gave a guarantee against its being used for the Confederate States, that then he would have negatived the assertion if there be any intent within the act of Parliament.

Mr. KARSLAKE. Yes, my lord, that would be so. But, my lords, I contend that it is not necessary that any one should negative the intent until the Crown has pointed out the person in whom the intent existed; and in reading these words "with intent," it is necessary, for the purpose of showing that the offense is complete, so far as the intention is concerned, and it is the duty of those who claim the forfeiture of the vessel to point out clearly and distinctly the person by whose "intent," construed as it is in the case of the United States *vs* Quincy, by whose guilty intent it is that the ship became forfeited. Because I say that, unless that intent on the part of such a person is proved to exist in the first instance, no attempt can be proved, and no person can knowingly aid or assist; all the attempts and the aiding and assisting spoken of in the section must be attempts to carry out a design formed by a person who has the power of forming the design; that is, in other words, a person who has such control over the vessel that he himself can send it on any expedition he likes, it being found that the expedition on which he intends to send it is one of those expeditions prohibited by the seventh section of the statute. If reliance is placed on that part of the section which says that a ship may be forfeited, and a misdemeanor incurred by an attempt, it becomes necessary to show that there is some person, either the person who has control, or some other person acting in furtherance of the design of that person, who is, with the intention of carrying out that design, doing something toward placing the ship in an armed condition. The next words, "knowingly aid or assist," require no explanation, because it is obvious from the introduction of the word "knowingly," that it is intended that any person who is working about the vessel, unless acting in furtherance of the design of the owner or controller of the vessel, is not guilty of a misdemeanor or doing an act which may lead to the forfeiture of the vessel.

Then, my lords, having made that comment on the intent provided for by the act, we then come to the consideration of what the meaning of these words "equip, furnish, fit out, or arm" is. What is the meaning to be put upon those words?

LORD CHIEF BARON. You are going to another branch of your argument, are you not?

Mr. KARSLAKE. Yes, my lord.

LORD CHIEF BARON. Then we will adjourn.

Adjourned until to-morrow at 10 o'clock.

THIRD DAY.—THURSDAY, November 19, 1863.

Mr. KARSLAKE. My lords, I commented yesterday upon the language of the seventh section of the foreign enlistment act, so far as the intent was concerned, and I had taken that part of the section before proceeding to discuss the question as to the meaning of the words "equipping, furnishing, fitting out, or arming." Now, before discussing the meaning of those words, it will be convenient to call attention very briefly to what I believe is the construction, as far as I can ascertain it, which was put upon that language by the late attorney general in the conduct of the cause, and also by my learned friend the attorney general in moving for the rule. It will be convenient to read the definition which the learned attorney general, in moving for the rule, gave of the word "equipping," in the seventh section of the act. I take the word "equipping" as the ruling word of this sentence. Now, the learned attorney general said, "The statute provides against any person doing any one of these things, it being in the disjunctive; it distinguishes them, and seems to be carefully worded in order to avoid the chicanery which would result from requiring some particular species of furnishing, some particular species of fitting out, some particular species of equipment, in order to make the act penal in a case in which the attempt is proved."

Mr. BARON BRAMWELL. Where is this, Mr. Karslake?

Mr. KARSLAKE. In the attorney general's motion, my lord.

Mr. BARON BRAMWELL. But where?

Mr. ATTORNEY GENERAL. At the top of page 56.* I believe that this print has never been corrected; but your lordships will easily perceive where errors occur.

Mr. KARSLAKE. What I am reading from seems to be correct. "I say that the whole gist there is the intent and the purpose, and that any species whatever of equipment, however innocent, *per se*, any species whatever of furnishing, any species whatever of fitting out, whether with or without arming, is struck at by the act, by its plain words, according to their natural meaning, (and that, I apprehend is their object and policy,) provided always that the intent and purpose is established. Now what are the words?—'Equip, furnish, fit out, or arm.' If it had stopped there of course it would not have had the effect of prevention. The statute of course aims at prevention, not at punishment when the thing is done. The statute desires to stop the thing *in limine*, to cause the thing not to be done; and therefore, instead of stopping at these words it goes on, 'or attempt or endeavor' to do any one of these things; so that however little progress may have been made, and in whatever imperfect condition the ship may be as to these things, when she is seized, if any step has been taken which is an attempt or endeavor to do any one of these things, provided it be a prohibited attempt, it is struck at; and not only the attempt or endeavor, but any one who shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming." My lords, I believe that in reading these words I have represented correctly the view which the learned attorney general presented to the court, and which I suppose he will again present to the court in arguing this rule. I do not know whether my learned friend will admit (because great caution was observed both by my learned friend and by the late attorney general upon that subject) that the sale of the hull of a vessel with no equipment at all, but simply the hull of a vessel, intended to be used, when complete, in the service of one of two belligerents, would be an infringement of the act, supposing the intent existed. I shall argue that it is not; and that for the purpose of making out an offense under this act, by equipping, or fitting out, it is necessary that there shall be, first of all, that in existence which may be called a ship or vessel, and then that that ship or vessel shall be equipped. My learned friend says that the equipment superadded to the ship or vessel may be an innocent equipment, and that an innocent equipment will render the ship liable to forfeiture; whereas, on the other hand, we say that the equipment which is to be superadded to the vessel does not mean an innocent equipment at all, but means something of a warlike character.

Now, my lords, to take an instance, one that seems to have been relied upon at the trial, and it may be a convenient instance by which to test the construction put upon the case by my learned friend. Mr. Barnes or Mr. Morgan—I cannot be quite certain which of the witnesses it was—after being asked about the stanchions for the hammock nettings, was asked a question as to whether the vessel had a lightning-con-

* See page 174.

ductor—that will answer my purpose as well as any other equipment or any other matter which it is suggested was to be used as an equipment for the vessel. My learned friend's contention is this, that up to a certain point you may go on building the vessel whatever the intent may be, (at least I assume it to be so,) but that the moment you do that which, as distinguished from building a vessel, is found by the jury to be an equipment of the vessel, although it may be reasonably found in vessels of every class and description, yet if it be an equipment, and the intention still continues to exist, the vessel is forfeited.

THE QUEEN'S ADVOCATE. What you have referred to was in Mr. Morgan's evidence.

MR. KARSLAKE. The argument is that the lightning-conductor added to the hull of the vessel enables the Crown at once to seize the vessel as forfeited, because there is something in the nature of an innocent equipment on board that vessel.

Now, my lords, will the words of the act bear that construction? I call your lordships' attention to this more particularly now, because it will be material with reference to the summing up of the learned chief baron, and the charge which is now made of omission in the summing up. If your lordships look through the notes of the trial, it will be found that throughout the trial the question raised on the part of the Crown, as against that raised on the part of the claimants, was whether an equipment, even an innocent equipment, was or was not sufficient to forfeit the vessel, it being alleged on the part of the Crown that it was so; whereas it was alleged on the part of the claimants that as long as they fitted the vessel without putting on board equipments of a warlike character, no forfeiture was incurred.

Now, the clause, as your lordships see, although it may have been suggested by the clause in the American act, certainly is not copied from that clause. The words relating to transports are not found in the American clause at all; the collocation of the words is different, and the words themselves of the American clause are in many respects very different indeed from those which are found in this clause.

MR. BARON CHANNELL. In the American act it is "and" instead of "or."

MR. KARSLAKE. Yes, my lord; and afterward the word "or" is found in the clause of that act; and it is suggested that you may frame an indictment against an aider and abettor for fitting out without saying "arming," and that that indictment would be good, although if you indicted the principal under the American act you must say "arming and fitting," or else it would be bad, a somewhat strange conclusion.

LORD CHIEF BARON. If you consider it I think you will see that a man who takes a part and assists in doing a part which is necessary to the whole may possibly have nothing to do with the other part. Take a familiar instance: Suppose it were an offense to travel from London to Windsor, or to make any attempt, or to assist anybody in doing so; a man who assisted a person to travel from London to Hounslow might be accused of that which is part of the journey, he having nothing upon earth to do with the other part. That makes the matter intelligible in the view which I take of it. If it is an offense to equip and arm, and a certain person, who may for this purpose be called the principal, intends to equip and arm, anybody who assists him in the equipment, without any reference to the arming, may be guilty of the offense.

MR. KARSLAKE. That may be so, my lord.

LORD CHIEF BARON. It does not occur to my mind that there is any difficulty in it at all. The principal person must intend to do both. If he intends only to go to Hounslow when the offense is not perfect unless he goes to Windsor, you cannot indict him for going to Hounslow.

MR. KARSLAKE. No, my lord; and I again suggest that that would be so, though the person who is alleged to "attempt" thought that the person whom he assisted meant to go to Windsor; he could not be found guilty as an accomplice, because it could not be shown that the alleged principal had committed an offense.

MR. BARON CHANNELL. If you take the third section of the American act as an instance you will find that the words are in the conjunctive when the statute deals with the principal; and when it comes to a person who may be treated to a certain extent as an accessory, the word "and" is left out, and the word "or" is substituted.

MR. KARSLAKE. Yes, my lord; but I should have thought that the same person who might be indicted under the words of the first part for "fitting out and arming," might be indicted for "attempting to fit out," without saying "arming," at all.

MR. BARON CHANNELL. As I understand it, the American decisions do not go that length. There is a case in which they decided that you might charge an attempt to fit out without charging an attempt to arm; that was the case of Quincy, where he was concerned, not as the actor, but as a kind of accessory to the principal. The words of the third section of the American act are: "If any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed." I suppose that that is treating with the principal person; there it is in the conjunctive; then come the words "or shall knowingly be concerned in the furnishing, fitting out, or arming."

MR. KARSLAKE. Yes, my lord.

Now, my lords, the distinctions which will be found between this section and the

seventh section of the act of 59 of George III are very obvious and manifest. I am not dwelling upon the conjunctive "fit out and arm," but the words are so much clearer than those to be found in the section of the English act that there can be little difficulty in ascertaining what the real meaning of the first part of this clause was, for the purpose, at all events, of framing an information or an indictment. The difficulty of construing the seventh section of the act of 59 of George the III has occurred to my learned friends, as will be seen by the way in which this long information is framed. The third section of the American act is: "If any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm," and so on, "any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise," and so on; the intent is that the ship shall cruise in the service of a foreign state. Many of the counts of this information follow that which is certainly the grammatical construction of the seventh section of the English statute, and charge the offense as being that certain "persons equipped, fitted out, and armed a ship or vessel with intent to cruise and commit hostilities;" and clearly, according to that construction of the statute, the intent is charged against the person who fits out the vessel; and I apprehend, looking at the history of the act, and the occasion upon which it was passed, that was really what the legislature intended. But there is another construction which is put upon the act by my learned friends in argument and adopted in some counts of the information, and that is this: That if any person shall fit out a vessel with intent or in order that the vessel shall be employed with intent to cruise and commit hostilities; putting in both the intents in those counts of the information. My lords, I do not propose to consider now which of those constructions is the correct construction. It may be that the first is the correct one; it may be that my learned friends are justified in construing the statute as being a statute in which the intent which is mentioned is an intent that the vessel shall be employed to commit hostilities, and not that the persons fitting out are themselves intending to commit hostilities in the vessel so fitted out. The first construction may be that which was intended to convey the true meaning of the legislature.

But, my lords, having called your lordships' attention to what has been said by my learned friend the attorney general as being his interpretation, namely, that, assuming the existence of a ship, any innocent equipment is within this section, I venture, on the other hand, to put the construction which has already been presented by my learned friend Sir Hugh Cairns. My learned friend the attorney general puts the very widest construction that can by possibility be put upon the section; he denies that it is necessary that the equipment should be a warlike equipment at all. My learned friend Sir Hugh Cairns, on the other hand, contended that when you look at the word "equip" in connection with the rest of this clause, it is quite obvious that the meaning of "equip" must be either that there shall be an equipping in a warlike manner partially, or that the vessel shall be so equipped for war that she shall be ready to commit hostilities as soon as she leaves a port of this kingdom. Now, Mr. Baron Bramwell, I think, kindly suggested, in the course of Sir Hugh Cairns's address, that probably the wider construction, namely, that the equipment must be such as fits the ship for carrying on hostilities, which it is unnecessary to contend for now, may be the proper construction. I apprehend that it will not be denied that this section only applies to a case where war is actually going on between two foreign belligerents; that it will not be said that it was intended by this section to prohibit the sailing of armed vessels to a power which was likely to go to war, and contemplated going to war, with another state; that there must be existing hostilities, and that it is only to such a case that the statute applies.

Now, if your lordships look at what the intention is, either in the persons who fit out the vessel, or in those who deliver the vessel to be employed, the object clearly is that the vessel shall cruise and commit hostilities. Does that mean that she shall be equipped in such a manner as to cruise and commit hostilities, or that an innocent equipment is to cause the vessel to be forfeited if the intention exists? Your lordships have to judge between the two constructions; and while it is asserted by my learned friend that your lordships should construe the act by saying that the vessel must exist in the first instance, and then, supposing the existence of the vessel, any innocent equipment added to that vessel with the intent is sufficient to forfeit it, on the other hand, it is suggested that, looking at the whole of this section, and the object with which the act was passed, it is necessary either that there should be such an equipment as will enable the vessel to take the seas ready for aggression or defense, or that, at all events, the equipments struck at by this section must be warlike equipments, and that if they are found to be innocent equipments, then the section does not apply.

Now, I do not know that I can urge anything further than has been said by my learned friend upon this subject. Your lordships' attention has already been called to the next section of the statute, which says in so many words, as I apprehend, that you may equip a vessel of war belonging to a belligerent which seeks safety in these ports; that you may equip her to any extent you like so long as the equipments are innocent

equipments. What that section provides against is adding to her warlike equipments; and I contend it is said, therefore, that you are not prohibited from furnishing a vessel of war which seeks a refuge in the ports of this country with anything in the nature of equipment that she may require so long as it is of an innocent description. You may not increase her armament, it is true; but while it must be admitted on the part of the Crown that you may furnish equipment of an innocent character to a foreign belligerent war vessel, it is contended at the same time that you must not build a ship and then put a lightning-conductor on board, because you are superadding an innocent equipment to the hull of a vessel already constructed. My lords, I submit that that is rather an unreasonable construction, and more unreasonable when your lordships find the circumstances under which this act was passed, and what, as I venture to think, the act was intended to prohibit.

Mr. BARON PIGOTT. The act uses the words "equipment for war" in that section.

Mr. BARON BRAMWELL. That is your argument, because you say that that shows that any other equipment is lawful.

Mr. KARSLAKE. Clearly, my lord.

Mr. BARON BRAMWELL. The consequence, therefore, is, that a belligerent's own vessel of war may be equipped in every sense, provided the equipment is what you have designated as innocent.

Mr. BARON PIGOTT. You may go further than that—you may include her arms, only you must not augment the arms.

Mr. KARSLAKE. That, probably, is so also; it would make it all the stronger. I am glad to hear the learned judge say that that is the construction of the statute. The words to which Mr. Baron Bramwell called attention yesterday, strengthen the construction which we put upon the act, and show that the meaning of the act is that a vessel shall not be so equipped as that she shall be in a condition to commit hostilities upon leaving this country. When your lordships look at the history of the act, that is by no means an unreasonable conclusion. There is a prohibition upon the ship-builder to some extent, (and it is for your lordships to say to what extent; he may not "equip" a ship, but it is clear that according to law, although he may not equip a ship, whatever that may mean, (I say equip for warlike purposes,) although he may not equip a ship in the ports of this country, he may in this country sell every part of a vessel, so long as the parts are not put together in this country, and he may sell all the arms and ammunition required for a ship of war; and I think that that consideration, as well as others which have been pointed to by my learned friend Sir Hugh Cairns, will have a very material influence on your lordships' minds in putting a construction upon the words of the act.

My lords, I say, therefore, that looking at the history of the act and the occasion which led to the passing of it, and looking at the right of the merchant in this country to sell contraband so long as it is not in a complete state, (and when I say "contraband" I allude to ships,) looking at the fact that the sale of the parts of the vessel of war is not a misdemeanor, I ask your lordships to put a reasonable construction upon the act and to say that the equipment aimed at and prohibited must either be of such a character as that the ship shall be useful at once for aggressive purposes, or that, at all events, the equipment to be commenced must be a warlike equipment, and that my learned friends cannot successfully contend that an innocent equipment superadded to a vessel renders that vessel liable to forfeiture.

My lords, of course I shall hear again in the course of my learned friend the attorney general's speech, that which was urged during the trial, and which was urged by my learned friend at the time when he moved for the rule, namely, that, unless the construction which he asks your lordship to put upon the act be adopted, this act will be a dead letter, and may at once be blotted out of the statute book. I say by no means. I say that there are offenses created by this act, according to the construction which we put upon it, which may well be guarded against; and I say further that by our construction of the act great evils will be provided against, although not perhaps the whole evil which, according to my learned friend, the statute was intended to prevent. I have no doubt we shall hear again of what are called evasions of the act. My lords, I dispose of those so-called evasions, by saying that if a new statute creates a new offense, a person, by doing a particular act, either commits the offense or does not commit the offense, and he has a right to do, after the statute has passed, that which he had a right to do before, unless he can be clearly proved to infringe the act by what he so does.

LORD CHIEF BARON. Forgive me for suggesting that the expression "a new statute creating a new offense," does not, I think, give the fullest effect to what I apprehend is the argument which you are about to propound. The expression rather means, a new statute which makes that a crime which was perfectly lawful before.

Mr. KARSLAKE. I am much obliged to your lordship.

LORD CHIEF BARON. A new statute may deal with something which was unlawful. There are many things which are unlawful, which are not punishable, which are not criminal; but this is a case where that which was perfectly lawful before, is made a crime. There is no doubt, according to all the authorities, and there is not the slightest

doubt now, that a neutral may furnish to a belligerent every possible description of warlike weapon or munition of war—every possible ammunition of every kind—and I think that no one can say that until the passing of this statute there was any known distinction by the law of nations between a ship and a gun. You may now supply a gun for a ship; you may now at Birmingham, or in any other part of the kingdom where there is a foundry sufficient for the purpose, order a gun, and you may say, "This is for one of the belligerents, to be taken to one of their ports, and put on board a certain ship to be expressly used for the purpose of the war which is now carried on against a power with whom you are at peace." You may do that, and I am not aware that you cannot do that with reference to a ship; but there is a doubt about it. No doubt you may now order a gun for a ship; whether you may order a ship for a gun seems to be a question. I think that the fullest effect is given to the argument which you are about to urge, as I apprehend and anticipate, by drawing attention not to the fact that the statute is creating a new offence, but something more than that—it is making that which was perfectly lawful before in every sense a crime and a misdemeanor.

Mr. KARSLAKE. Yes, my lord.

Mr. BARON BRAMWELL. That is the argument on the other side.

Mr. KARSLAKE. I was going to add this, in anticipation of an argument which will be used for the Crown, probably a great number of instances which will be suggested, by which what my learned friend chooses to consider the spirit of this act or the language of this act can be evaded. I dare say there are a great many cases in which it might be evaded according to my learned friend's construction of it. It may be said that if a vessel of war belonging to the United States is four miles from the coast of England, it will be an evasion of the statute to carry out guns or other munitions to that vessel; but I do not find that the law prohibits that. There are many cases where the act of supplying contraband to one belligerent is just as likely to irritate and vex the other belligerents, as that which is struck at and prohibited by this statute.

My lords, the statute therefore was passed, as I say, with a view to prevent our subjects from fitting out and equipping warlike expeditions from our shores. According to the history and occasion of the act, and as I say, according to the preamble of the act, that was what was intended to be provided for.

Mr. BARON BRAMWELL. To prevent our ports becoming stations of hostility.

Mr. KARSLAKE. Yes, my lord. My lords, it may be that the preamble of the act carries it further than was intended; but it is for your lordships to say, in giving a reasonable construction to a penal statute, whether any equipping, however innocent, of an innocent vessel, that is to say, of a vessel not fitted for war, is prohibited by this act, or whether something more must not be done before the vessel is to be forfeited, and all the persons assisting made liable to be punished for misdemeanor.

My lords, as regards evasion of the act, I will ask your lordships, instead of taking my language upon the subject of evasion, to adopt that which will be found in a note to Wheaton's last edition on international law, the words of a very distinguished person in this country upon the subject of the evasion of this very statute. My lords, they are contained in a letter* of Lord Russell to Mr. Adams, with reference to the celebrated vessel No. 290, or the Alabama. Great remonstrances had been made upon that vessel not being seized.

Mr. BARON CHANNELL. What is the page?

Mr. KARSLAKE. Page 735, my lord.

Mr. BARON BRAMWELL. Is that the American edition?

Mr. KARSLAKE. Yes, my lord; the edition of 1863, just published. This is published in London by Sampson Low & Co., and is also published in Boston. My lords, the part which I will adopt as a part of my argument upon the subject of the evasion of municipal law is this; it is contained in a note written on the 16th of October, 1862, from Lord Russell to Mr. Adams, acknowledging the receipt of further evidence as to the gunboat Alabama: "With reference to your observations with regard to the infringement of the enlistment act, I have to remark, that it is true that the foreign enlistment act, or any other act of the same purpose, can be evaded by very subtle contrivances; but her Majesty cannot, on that account, go beyond the letter of the existing law." Now that is the view which I shall ask your lordships to take of the argument as to evasion. I shall ask your lordships to see what the crime is which is provided against by the statute, and then to see whether the facts of this case clearly make out that any such crime has been committed.

Mr. BARON BRAMWELL. Will you let me see that book?—(The same was handed to his lordship.)

Mr. KARSLAKE. Now, I stated to your lordships that I did not think it necessary in the view which I entertained, and the view entertained by my learned friend, to go into any lengthened disquisition on the evidence in order to show that the verdict was perfectly warranted by the evidence, supposing that the ruling of the learned lord chief baron was correct. My lords, if it had been necessary to do that at all, it was done by my learned friend Sir Hugh Cairns, and the evidence in the case is fully before

* See vol. I, p. 545, and vol. III, p. 56.

your lordships. As I have already said, I understand my learned friend's objection to amount to this, that assuming his construction of the statute to be correct, then the evidence would have warranted a different verdict. My lords, I did not understand my learned friend, when moving for the rule, to say that, assuming that the learned lord chief baron laid down the law, as I venture to think he did, the jury were bound to adopt any other view than that which they did adopt, or come to any other conclusion than that to which they came.

Now, I must ask your lordships, before suggesting what was left to the jury by the learned lord chief baron, to see what turn the case took, and what was admitted to be the state of things as regards this boat, the *Alexandra*. It was admitted, beyond all question, that she was not armed. It was stated in the strongest language, as I understood it, that the real question which there was between the Crown and the claimants was this—as to whether the construction which was put by the Crown upon the statute was correct, or whether the claimants were justified in arguing and submitting to the jury that even if they thought there had been anything superadded to the vessel or ship, as suggested by the Crown, such superaddition not being of the distinctive warlike character suggested by my learned friend, there was not an infringement of the act. Now, it being admitted that there was no arming of this vessel at all, of course there were other things which had to be relied upon as being the equipments which, as my learned friend says, brought this vessel within the act. The whole question was, whether those equipments brought the case within the statute, or whether my learned friend Sir Hugh Cairns was right in arguing either that there must be a complete arming of the vessel, or if not a complete arming of the vessel, a warlike equipment of the vessel; that is to say, an equipment of a distinctive warlike character, in order to bring the case within the act. My lords, I find with some surprise that a charge is now made against the learned lord chief baron that when he left the case to the jury and commented upon the equipment and fitting out mentioned in the section, and called their attention pointedly to that, he did not upon every occasion read to them the whole of the words of the section, namely, the words “attempt or endeavor to equip, furnish, or fit out, or procure to be equipped, furnished, or fitted out, or knowingly aid, assist, or be concerned in the equipping, furnishing, or fitting out.”

Mr. BARON BRAMWELL. I do not see that the learned editor of Mr. Wheaton's book takes any exception to Lord Russell's letter.

Mr. KARSLAKE. No, my lord.

Mr. BARON BRAMWELL. I do not think it is perhaps of very great moment.

Mr. KARSLAKE. I only read it from that book because it happened to be in my hands.

Mr. BARON BRAMWELL. I do not think that he does take any exception to it.

Mr. KARSLAKE. No, my lord.

Mr. BARON CHANNELL. I do not see how he could.

Mr. ATTORNEY GENERAL. He gives a record of certain events and expresses no opinion upon them.

Mr. KARSLAKE. My lords, it being understood therefore that the vessel was admitted not to be an armed vessel, what I was saying was, that the issue raised, as I apprehend, between my learned friends and ourselves was this: First of all as to whether it was necessary in point of law that it should be a warlike equipment, and next whether the intent existed, as they say it did, by some person capable of exercising the intent; and I say that the objection taken by the rule on the ground that the learned lord chief baron did not properly direct the jury only amounts to this, namely, that when the learned lord chief baron gave his views to the jury, he did not, when he used the word “equip,” go on to use the words “or attempt or endeavor to equip, or procure to be equipped.” My lords, that objection being taken at this stage of the proceedings, one would have thought in common fairness, especially after my learned friend, the late attorney general, had said that he relied only upon the first eight counts of the indictment, my learned friends who appeared for the Crown, and who sat by when the learned lord chief baron was summing up the case, would have called his attention to the other words of the statute, and asked some special direction to be given upon that subject. I do not find that anything of the sort occurred, and that which had been the main struggle between the Crown and the claimants, and to which his lordship addressed himself in summing up, was the matter which was really left to the jury, and which satisfactorily disposed of the substance, at all events, of the case.

Now, my lords, what was it that the learned lord chief baron laid down to the jury? I apprehend that he laid down that which my learned friend has already suggested to your lordships, and that his lordship most distinctly left the question of intent to the jury.

Mr. BARON PIGOTT. I observe that in the summing up the lord chief baron speaks of the seventy counts.

Mr. KARSLAKE. Yes, my lord, that was doing the information injustice—there were ninety-eight counts.

Mr. BARON PIGOTT. He leaves that to the jury.

Mr. KARSLAKE. Yes, my lord. My lords, surely I may ask when an information is

framed upon an act of Parliament which contains a number of different words, and when the learned counsel for the Crown opens the case and says "There is only one substantial question; you may dismiss from your minds the whole of this voluminous indictment except the charge contained in the first eight counts;" and when that is the question fought from first to last, is it fair that when the case is moved in this court it should be suggested that his lordship in his summing up to the jury did not repeat all the different words found in the act of Parliament; and that because he did not repeat all those words from time to time, there has been a want of direction or a misdirection on the part of the learned judge? My lords, the case must be looked at with reference to the way in which the case was opened and the mode in which the case was at last left to the jury; because if your lordships find that there was really a dispute between the Crown and the claimants as to whether an innocent equipment was an equipment within the statute—if that was said to be one point, and if another point was made, whether a ship or vessel had been so far matured as that it could be equipped within the meaning of this statute, and was in a state capable of being equipped; and if a third question was as to whether the intent which was suggested (supposing any definite intent was suggested) had been proved; if those were the questions in the issue which arose between the Crown and the claimants, and if those matters were substantially left to the jury, then I submit that my learned friends have no right to come here and say that there are certain words in the act of Parliament technically creating a different offense, which words were not left to the jury from time to time in the summing up.

LORD CHIEF BARON. It was distinctly put to them whether there was any attempt.

MR. KARSLAKE. So we say, my lord; but from the rule I infer that my learned friend says that it was not left. I say that it was substantially left; but in the course of the summing up your lordship does not go on to say time after time the same thing; and there are the counsel for the Crown sitting by and intending to take an objection that that is not sufficiently pointed out to the jury, and yet they never suggest to his lordship that he should read the words of the section through time after time, and that whenever he spoke of the words "equipping or fitting out," he should say "attempting or endeavoring to equip or fit out."

Now I submit that, first of all, his lordship stated to the jury that the building of a ship, *simpliciter*, as distinguished from equipping, whatever that might be, is not prohibited by the statute. That ruling, I take it, my lords, is obviously correct, when your lordships find that in this statute the word "build," apparently advisedly, is left out. Moreover, it is correct, for this reason, that it is not a ship to be forfeited, which a person intends hereafter to equip, but the ship to be forfeited is a ship which is equipped or fitted out, or with respect to which there has been an attempt made to equip or fit out. Therefore I apprehend that his lordship was right in telling the jury, "If you find that this is, *simpliciter*, a ship not equipped or fitted out, or attempted to be equipped or fitted out, that is not within the statute."

Then, my lords, there is another direction to the jury with which I apprehend my learned friends quarrel, and that no doubt raises a fair point for discussion, namely, whether his lordship was right in rejecting the view which was pressed upon him by the learned attorney general, that supposing the ship existed, an innocent equipment of that ship was within the statute.

LORD CHIEF BARON. By "innocent" you mean unwarlike?

MR. KARSLAKE. Yes, my lord. I think that my learned friend, the attorney general, has stated what his view of the law is; it is in point of fact the same view as was stated by Sir William Atherton.

MR. ATTORNEY GENERAL. That which may be *per se* innocent; that is to say, dissociated from the intent.

MR. KARSLAKE. "Any species whatever of equipment, any species whatever of furnishing," and so on.

MR. ATTORNEY GENERAL. "However innocent *per se*."

MR. KARSLAKE. My learned friend again suggests that the putting up of a lightning-conductor is an equipment which renders this vessel liable to be seized, if there be an intent that she shall be used for the purpose of committing hostilities; and that, although that is an innocent equipment *per se*, she is, nevertheless, within the section, and according to this section liable to be forfeited.

Now, my lords, his lordship refused to adopt the view of the learned attorney general, and adopted a different view, and said, that in his judgment this equipment, innocent *per se*, even with intent, would not render the vessel liable to forfeiture; and that as regards the question of intent, which was of itself alone sufficient to dispose of the question, he asked the jury whether there was an intent to equip, and whether there was an intent to equip with a view that that vessel should be employed by one belligerent against another.

My lords, if that was the direction to the jury, (and I apprehend that it will be clearly found that that was the direction of his lordship,) is that direction to be quarrelled with, looking at the way in which the case was presented to the jury and to his lord-

ship, because his lordship did not go on to submit questions repeatedly to the jury on sets of counts in the indictment which were practically abandoned?

Mr. BARON CHANNELL. Is that so? You may be right, but I do not read the opening speech of the attorney general as amounting to an abandonment of all the other counts. The first eight counts are confined entirely to the equipment; each of those counts charges the equipment, and rings the changes upon the word "equip." Then comes the furnishing, and the same changes are rung upon the furnishing. There is then the fitting out. I do not think that the attorney general said that he abandoned all the other counts.

Mr. KARSLAKE. As I understand it, the issue at the trial was this: Has this vessel been equipped?

Mr. BARON PIGOTT. The lord chief baron does not, I think, seem to have taken it so at the trial, if you look at his summing up.

Mr. KARSLAKE. As I understand it, an insufficient direction is complained of with regard to those words.

Mr. BARON PIGOTT. We are not now upon those words, but upon the point whether all the other counts were abandoned.

Mr. KARSLAKE. When I say "abandoned," the expression is not strictly correct.

Mr. BARON CHANNELL. You have read the passage very correctly, but I was only drawing your attention to the question whether it amounted to that.

Mr. KARSLAKE. The attorney general did not say: "I enter a *nolle prosequi* upon those counts;" but the whole course of the trial shows what the issue was which was raised between the parties; and it is hard to say that because the lord chief baron did not use the words, "equip, or knowingly aid, or assist in equipping," it is to be held that there has been an imperfect direction upon those counts.

Mr. BARON PIGOTT. What I understood you to say is, that the question was not fought as to "attempting or endeavoring."

Mr. KARSLAKE. No, my lord; the questions raised were: first of all, the question of law; and then the question of intent. First of all it was an admitted fact that there was such a vessel as the *Alexandra* in some state of completion. Next, it was an admitted fact that she had stanchions fitted in her side for the purpose, as it was said, of afterward receiving hammock nettings. Then the contention on the part of the attorney general was: "I say that beyond all doubt these are equipments. That is not a question of law, and I ask you, the jury, to find the fact that those were equipments. Next, I ask you to find, although those equipments were innocent *per se*, that there was an intent to use the vessel so equipped (if you find that she was equipped) for the purpose of committing hostilities; and if so, I say, as a matter of law, I am entitled to the verdict." On the other hand it was said: "First of all, we deny that there was any equipment of any sort or kind. Next, we say that supposing the jury should consider that there was an equipment in any sense, it was not that equipment to which the statute points. Thirdly, we say that even supposing the vessel was equipped, there was not that intention which you allege, and which we say you are bound to prove." All those matters went to the jury, and upon all those matters the jury found for the defendants.

Mr. BARON BRAMWELL. Upon some one or more.

Mr. KARSLAKE. Upon some one or more; it may be upon one, it may be upon some, or it may be upon all; but it is quite sufficient for us to say that those matters were submitted to the jury, and that upon those matters they have given their verdict. My lords, I therefore do not propose now to go through the evidence in order to show that in that view the jury were perfectly justified in finding the verdict which they did; they could hardly have found any other verdict.

Mr. BARON BRAMWELL. Supposing that you had had undeniable evidence; supposing that one of the defendants had been called, and had said, "I admit that the vessel was to be fitted out here, so that she could sail to Madeira," or wherever you like; "I was to have nothing to do with her then, but I know that she was then to be armed; and I know that she was then to cruise against the United States; I confess that I fitted her out with a view to all those things following therefrom;" would that be a fitting out with the intent that she should cruise?

Mr. KARSLAKE. Your lordship says, "I fitted her out." To what extent? Does that mean so as to make her sail?

Mr. BARON BRAMWELL. I will use your own expression, which, I think, is a very convenient one. "I fitted her with an innocent fitting, with a view to enable her to sail to the coast of Africa."

Mr. KARSLAKE. According to my construction, I should say that that would not be such a fitting out.

Mr. BARON PIGOTT. And he might go on to say, "I know that if I had not fitted her as I did, she would have been taken by one of the belligerents immediately outside the English territory."

Mr. BARON BRAMWELL. "If I had not fitted her out as I did she could not have gone

out at all. I fitted her with sailing apparatus. I am a strong confederate partisan, and I did it in order that she might be armed on the high seas, and cruise."

MR. KARSLAKE. I should say it was no more an offense within this act than if he had sent out in another vessel the iron plating of a vessel which was lying wherever you please abroad, and which was intended to be put on board that vessel, and used in that vessel for warlike purposes.

MR. BARON BRAMWELL. I throw it out for your consideration, if it is worth your notice. It may possibly be said that you are not only to look at the proximate cause, but that you must look at the proximate object as well. The rule applicable to the proximate cause, I apprehend, is applicable also to the proximate object.

MR. KARSLAKE. My answer to the question would be, that that would not be an offense within this statute.

MR. BARON BRAMWELL. You say that it must be his immediate intent.

MR. KARSLAKE. Yes, my lord, but it may not be necessary now to go to that extent. In this case it may be quite sufficient for us to say that the equipment must be a distinctly warlike equipment. But I say that, construing the statute fairly, we have a right to go even further than that, and to say that the object of this statute was, that you shall not make one of the ports of this country a port of departure for ships fitted for aggression.

MR. BARON BRAMWELL. It is very possible that the statute, in its anxiety to prevent what was objectionable, may have said, "We will prevent also that under color of doing which the objectionable thing may be done;" and therefore the legislature may have said, "We will prohibit that which international law does not prohibit." Now, I own that it is put in a captivating way to my mind. See if there is the fact, namely, the equipment; see if there is the intent, namely, to commit hostilities; if the two things concur, however irrational it may be to suppose that a vessel with an innocent equipment could commit hostilities, still that will be enough. Then another way in which it is put is the view which I have suggested to you, namely, that you may look not only at the immediate intent, but at all the intents intended to follow in any train of causation.

MR. KARSLAKE. Or expected to follow. There comes the great difficulty.

MR. BARON PIGOTT. I dare say that the words of the section where the forfeiture is described, and where it is said what shall be forfeited, have not escaped your observation?

MR. KARSLAKE. They have not, my lord; "the tackle, apparel," and so on.

MR. BARON PIGOTT. Yes, and not only that, but it forfeits "every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to, or be on board of, any such ship or vessel," apparently contemplating that there may be none on board.

MR. KARSLAKE. I do not know, my lord. It is the ship with her tackle, apparel, and furniture, no doubt. My lord, the earlier part of the section provides for that. I say that you do not forfeit a ship *simpliciter*, but that you forfeit an equipped ship.

MR. BARON BRAMWELL. With great respect, I cannot concur in that; because, suppose that a man was attempting to fit her out, that is to say, suppose that he had brought down to the water side the guns and powder, and the crew, and was stopped at the moment he was doing it.

MR. KARSLAKE. That is because I did not go on to say "or attempted."

MR. BARON BRAMWELL. I cannot think that it is an argument against you to say that the statute contemplates that the vessel may be forfeited if there are no arms on board, because she may be forfeited if her armament is brought down to the water side, and she is stopped at the moment of taking it on board.

MR. KARSLAKE. I thought that my learned friend Sir Hugh Cairns had gone into that matter to the fullest extent. If a person has under his control several cannon, and is putting them on board with that intent, the vessel, with her guns, would be forfeited. Looking at the whole of this section together, the object is apparently that the ports of this kingdom shall not be made ports of departure for vessels equipped for aggressive purposes, and that an attempt shall not be made to use them as such.

MR. BARON BRAMWELL. Stations of hostilities?

MR. KARSLAKE. Stations of hostilities, if your lordship likes to take those words.

MR. BARON BRAMWELL. It is not my expression.

MR. KARSLAKE. I am much obliged to your lordship for it. My learned friend, Sir Hugh Cairns, pointed out that when you are talking of the facility of evading a statute of this sort, you can see how easy it is to evade, as it is called, that part of the statute which says, "or shall within the United Kingdom, or any of his Majesty's dominions, or in any settlement, colony, territory, island, or a place belonging or subject to his Majesty, issue or deliver any commission for any ship or vessel." You may go outside this realm and deliver the commission; but you may not do it inside this realm. I suppose it will be said, that if you go outside the realm, you are evading the statute. I say that you do not do that which the statute prohibits; and if you do not you commit no offense. Your lordships will construe the statute by ascertaining

what the circumstances were which led to its enactment, and what the evil was to be provided against, and then put that reasonable interpretation upon the words "equip," and so on, found in the statute, which you consider to be the true meaning of a statute framed in doubtful and ambiguous language, creating an offense and attaching a very considerable penalty to that offense. I submit that, according to the reasonable construction of the statute, the vessel must be equipped for hostile purposes when she leaves this country; or that, at all events, the equipment added to a vessel in the course of building must be an equipment of a distinctive warlike character, and that an equipment of an innocent character, even though the intent may exist, will not render the vessel liable to forfeiture.

MR. MELLISH. My lords, I am on the same side as my learned friends; and certainly, if this was any ordinary case before your lordship, I should almost be ashamed to enter upon any argument after the matter has been so thoroughly gone through as it has been by my learned friends who have addressed your lordships before me; because I feel that it is difficult to say anything without, to a certain extent, repeating what has been said before; but yet the matter is of such very grave importance that I do not think I should perform my duty either to your lordships or to my clients if I did not shortly, even though I may to some extent repeat what has been said before, state what is the view which I venture to take of this section which is to be construed by the court.

LORD CHIEF BARON. We should be very sorry if you were to shorten your argument in the smallest degree. It is a subject which, no doubt, is of extreme importance, and the interests of this country are in various ways involved in it. We shall hear with very great satisfaction whatever will tend to throw light upon the subject, and I do not think that anything which comes from you will not have that tendency.

MR. MELLISH. Having had a little experience of the great ability of my learned friend the attorney general, I know his great skill in remarking upon the different views which have been taken by the different counsel who are opposed to him; and therefore I say, that in presenting the view which I am about to present to your lordships, I of course am not to be taken as in any degree abandoning or qualifying what has been previously said by my learned friends. But I venture to go to this extent, that it is perfectly legal under this act of Parliament for any ship-builder in this country to build a ship, adapted for war, under a contract with one of two belligerents, and to equip that ship, so far as is necessary, to enable it to sail away from this country, and to deliver it to the belligerent either here or elsewhere in that unarmed state.

Now, first of all, what is the meaning of this section? What is forbidden, is "equipping, furnishing, fitting out, and arming." It is said, and it may be so, no doubt, that there is a difference between "arming" and "equipping, furnishing, fitting out." I have not heard from anybody that there is any difference between "equipping" and "furnishing and fitting out."

MR. BARON BRAMWELL. No.

MR. MELLISH. They seem to me to be all absolutely the same thing. But they all imply this, (and I do not think that the court will have much doubt upon that,) an addition of something to a ship already built. I do not know that the counsel for the Crown will contend for it, but I know that it is contended for by some persons, whose opinion may be very much respected, that the moment you put a plank down, if it is with a hostile intent, that would be within the statute. But that would be clearly to extend the words "equip, furnish, and fit out" beyond their plain and ordinary meaning. In their plain and ordinary meaning they clearly imply the adding something to a ship which, as far as the hull is concerned, is already constructed.

Now, that being so, the building of a ship is not forbidden by this statute; and the question is, Was it the intention of the legislature, though they did not forbid the building of a ship in express and direct terms, by implication to make it unlawful? because it is obviously impossible to build a ship or to sell a ship adapted for war to one of two belligerents, unless you are allowed to equip it so far as to enable it to sail away. To say, "You, the ship-owners and ship-builders of this country, may sell a ship as much as you please, and you may build a ship as much as you please, on a contract with any one of two belligerents; but mind, you must put nothing on board of it which will enable it to sail away," is a perfect absurdity; and it does seem to me very extraordinary that if that was in the mind of the legislature, and if it was the object of the legislature to prevent any belligerent providing himself with ships in the ports of this country, they did not in plain terms say, "You shall not be allowed to build a ship, or to sell a ship to one of two belligerents."

Now, do the words of this section compel the court to come to that conclusion? I say that they do not; for if you read them fairly and reasonably, with a view to find out what is intended to be forbidden by them, they do not forbid every description of equipment, every description of furnishing, and every description of fitting out, but only that description of equipment, furnishing, and fitting out which tends to make the vessel a transport or store-ship, or a ship to cruise or commit hostilities. It is not equipment as such, but equipment as a transport or store-ship, or as a ship to cruise or

commit hostilities, which is forbidden and made illegal by this act. No doubt, when you ask what is the meaning of "equipping" a ship, you must first ask what is the description of the ship with reference to which you are talking. No doubt there are many descriptions of ships, and most descriptions of ships, in which arming would be no portion of the equipment. If you talked of "equipping" a whaler, you would think that harpoons were a necessary portion of the equipment of that ship. If you talked of equipping a transport, then putting a ship into that condition as to its cabins, and so forth, which would render it fit to sail as a transport, would be an essential part. Everybody knows that when, two years ago, it was necessary to send out in a hurry troops to America, or in the year 1854, when it was necessary to send large bodies of troops to the East, and the government were taking up ships of every description, we all heard that they had to go into dock for a week or two in order to be fitted as transports. Even an ordinary ship could not be employed as a transport unless very considerable additions to the fitting were made, and all such vessels went into dock for that purpose. Now I say that that is what is forbidden by this act.

Now, my lords, let us look once again at the words "If any person shall fit out and equip a ship or vessel with intent or in order that such ship or vessel shall be employed as a transport." Not merely "with intent," but "in order that." It is said that there is an "or." In numberless cases of acts of Parliament where you find the word "or," one expression is meant to throw a light upon the other. There are the words "cruise or commit hostilities." I suppose that the words "or commit hostilities" are intended to throw a light upon "cruise," because an innocent cruising is distinguishable from "committing hostilities," and would not be within the act. So when it is said, "with intent or in order that such ship or vessel shall be employed in the service of any foreign prince as a transport or store-ship, or with intent to cruise or commit hostilities," the act which is forbidden is an equipment, in order that the vessel may be used as a transport, or in order that the vessel may be used with intent to cruise or commit hostilities. The mere grammatical construction of the sentence is rendered very difficult, and, in fact, is rendered to a certain extent impossible, by the very odd insertion of the second words, "with intent," before the words "to cruise or commit hostilities." The first words, "with intent or in order that," no doubt describe what the person who is forbidden to equip intends and actually does. I cannot help thinking that the second words, "with intent to cruise or commit hostilities," are simply put in opposition to the words "as a transport or store-ship," and are only intended to describe the purpose for which the vessel is to be fitted or equipped; that it is to be as a transport or store-ship, or with intent to cruise or commit hostilities, and that what is forbidden is the equipping and fitting out of a vessel so as to be adapted to cruise or commit hostilities.

Now that is very strongly corroborated by what has already been so fully pointed out to your lordships, that beyond all question the actual mischief against which the statute was directed, the actual thing which caused the legislature to pass this statute, was that a great number of persons were equipping ships to a very large extent, and rendering them fit to commit hostilities directly they left the ports of this country, and were hiring them as transports and store-ships, fitting them out and embarking men on them, and setting sail on actual expeditions on a large scale from the ports of this country. That is the thing which it was mainly intended to prevent, and I apprehend that it was intended to prevent it, as has been already shown by the many citations which have been made to the court, not so much for the benefit of one of the two belligerents, but because it was an absolute insult to the authority of the Crown in this country that anybody should be attempting to prepare warlike expeditions and warlike operations from the ports of this country, and that that was intended to be put an end to.

Then that is very strongly corroborated by the next section, namely, the eighth section. Beyond all possible question, that which is forbidden by the eighth section is the furnishing warlike equipment to a vessel which is already actually a war vessel in the service of one of the two belligerents, and which has come into the ports of this country. That in its terms is, beyond all question, confined to hostile equipment. If a man-of-war belonging to one of two belligerents comes into the ports of this country, having suffered sea damage, or having been engaged in an action with her enemy, having lost her masts, and with her ports broken in, it is perfectly lawful to repair all sea damage which that vessel has suffered, including, I apprehend, clearly, the structure of the ship, though it may be a structure adapted to warlike purposes. It is lawful to give her a new mast; it is lawful to repair her machinery; it is lawful to furnish her with provisions; it is lawful to furnish her with coals. It is not lawful to add to her armament; it is not lawful to furnish her with warlike stores; it is not lawful to furnish her with guns. If a ship in the perils of the seas had had her ports broken in, and had had her guns thrown overboard, you might, I apprehend, repair the ports, but you could not replace the guns. Now what we say is, that the seventh section is to be construed exactly as the eighth is, with this difference: the eighth applies to a ship already in the service of the enemy, and already equipped for warlike purposes; the

seventh applies to a ship intended to be put into the service of the enemy, but not armed. And just as you may repair the sea damage and furnish all peaceful stores to a ship already in the service of a belligerent, so you may construct a ship altogether, and fit it up with all peaceful stores, which is intended to be in the service. And this shows, beyond all question, that the act was not passed simply for the benefit of one of the two belligerents, and for preventing the other from obtaining assistance in the ports of this country. If I were asked at this moment what is most offensive to one of the two belligerents, and does them most harm, I should say the furnishing and selling of coals to those steamers which are roving about the waters. If the Alabama and the Florida could not buy coal from neutral nations, it would be simply impossible that they could go about at all. If you look simply to the assistance afforded to the belligerents, what difference is there between selling coal and selling gunpowder? The one is just as essential to enable the vessel to cruise as the other. What I have stated is the law in this country we all know is the law now practically enforced in every other country. The Florida is at this moment repairing sea damage in the port of Brest.

LORD CHIEF BARON. Do you imagine that we could sell gunpowder to an American vessel in one of our ports?

Mr. MELLISH. Not, I apprehend, to a ship which is already in the service of war. That, I apprehend, would be adding to a warlike force.

LORD CHIEF BARON. That is adding to a warlike force.

Mr. BARON PIGOTT. Do you think that you may substitute one gun for another of the same power?

Mr. MELLISH. That would not be illegal, except that I should rather suppose that we must look at things practically. I should have a very strong suspicion, when I found a man changing one gun for another, that the gun which he gave up was not so good as the one which he took.

Mr. BARON PIGOTT. I by no means say that it is so, but that section in that respect may be a little doubtful; it is doubtfully worded.

LORD CHIEF BARON. You observe that this is expressly "by adding to the number of guns, or by changing those on board for other guns."

Mr. BARON PIGOTT. Or doing that by which the equipment is increased or augmented.

LORD CHIEF BARON. "Any equipment for war," would that include gunpowder or shot?

Mr. MELLISH. Yes, my lord; I presume that gunpowder or shot would be equipment for war.

Mr. BARON PIGOTT. No doubt.

Mr. MELLISH. And therefore I say that it illustrates what I was putting to your lordships as the difference between a warlike equipment and what I call peaceful equipments; and as it is perfectly lawful to furnish peaceful equipments to a ship already built, being a ship of war in the actual service of one of two belligerents, is it anything extraordinary to suppose that it was intended that it should be equally lawful to furnish peaceful equipments to a vessel which is intended to be in the service of one of two belligerents?

Now the great argument which has been pressed against us by my learned friend the attorney general, and which has been referred to over and over again by the court, and which I can see operates on the minds of your lordships, is, that this construction will lead to such a very easy evasion of the act. It is said that it is perfectly nugatory to make it illegal to put a warlike equipment on board in the ports of this country, because it can be so easily evaded by sailing out without the equipment, and then having another vessel following after with the equipment. Now, my lords, the first remark which I would make on that point is, that notwithstanding all the discussion which has taken place, and the examination of what has actually taken place, I do not find that either before the foreign enlistment act, or after the foreign enlistment act, either in America or in England, this has ever been done. It appears that the Alabama sailed to the Azores, and took her armament on board in the port of another neutral country. I need hardly say that what takes place in the ports of another neutral country is nothing to us; but the stress of the argument, as I understand, on the other side is, that it would be so remarkably easy to bring this equipment out and put it on board on the high seas. Now, I cannot help thinking (I may be wrong about this, and I do not pretend to speak as a person with any peculiar knowledge) that the reason why that has never been done is, that it is by no means so easy to do it as is supposed. Modern guns, I rather apprehend, are so very heavy that if you tried to bring them out and to put them on board another ship, you might wait for a month in the middle of the Atlantic before you could find a day on which you could do it, and certainly it is remarkable that the Alabama should have gone in an unarmed state the whole way to the Azores, running not only the risk of being taken on the passage, but running the risk that any law in the nature of a foreign enlistment law which might exist at the Azores would be put in force against her, and that she would be prevented by the government of that country from putting her guns on board there. It certainly strikes me that it may be the case that unless you get into some port, or at least some quiet

roadstead where you are near the land, you practically cannot take your hostile equipment on board at all, and that that is the reason why it has not been done. You find the vessels in those American cases going partly equipped from the ports of the United States. You do not find them taking their armament on board on the high seas, but in the West Indies, or somewhere else; and this is a very material thing; because, unless this mode of evading the act was so practical and so obvious that you must suppose that it was necessarily before the mind of the legislature when it passed the act of Parliament, the argument respecting the evasion comes absolutely to nothing. It must be remembered that at the time when the foreign enlistment act was passed there were no ocean steamers—there were some steamers going perhaps from Dover to Calais, and to Ireland, or something of that kind—but there were actually no ocean steamers which one could have used to go over these seas; and in sailing vessels I apprehend that the transposition of the equipment would be still more difficult.

LORD CHIEF BARON. With reference to assisting an actual belligerent ship in one of our ports, would it be consistent with this act of Parliament, if a vessel came in (to borrow an expression which you will understand) almost a congeries of planks, being what the lawyers here call a total loss of a particular description—a vessel not worth repairing, excepting that in war, money, though the sinew of it, is not of much importance, and so the cost of repairing a vessel would be nothing—would it be lawful, if a vessel were a mere wreck, to put her into a dock and repair her and fit her out, and make her what she was when she left the United States?

MR. MELLISH. Yes, my lord, I should think so.

LORD CHIEF BARON. You would say that, provided she could merely get into a port with her guns and ammunition in safety, she might be rebuilt?

MR. MELLISH. Yes, my lord; and I apprehend that she might take out the armament which she brought in, though she could not have a fresh armament; and that perhaps might be the reason why a man might repair his vessel instead of ordering a new one, because if he ordered a new one, he could not transfer the armament to her; whereas if the old ship was repaired, then he might carry his armament away.

LORD CHIEF BARON. Would not the doctrine of constructive total loss apply?

MR. MELLISH. That I cannot say, my lord. I am not aware that it ever has been applied.

LORD CHIEF BARON. It is a very great pity that no cases have occurred within the last forty years. We have to imagine a great variety of cases, and to consider them.

MR. MELLISH. I say that you must look, in construing the statute, principally to what actually has been done. The legislature do not give themselves the trouble, for the most part, to consider what never has happened; and I would submit that that would be an answer to the question which Mr. Baron Bramwell has put in one part of the argument, namely, "What would you say would be the rule of international law if a ship were sent out without her armament, and then another ship came out with her armament; can you find any authority in international law upon that point?" The answer is, the thing has never happened, and the writers upon international law have for the most part looked to what has happened, and not to what may be possible to happen; and legislation goes on in that way; you pass your legislation with reference to what actually has happened and is before your eyes, and you do not apply yourselves to consider what possibly may happen; you wait till it actually takes place, and then if it is within the mischief, and the legislature think it wrong, the legislature pass a new act. And I would say this, with reference to the doctrine of evasion: if it is a question between two constructions of the statute, and the only question is, whether you will extend it so far and no further, as will include something which is an evasion, and is within the mischief, and you can do that without including anything else which is outside the mischief, then it may be a reasonable argument, and the court may be desirous to extend the construction so as to include a case within the mischief. But if you find that you cannot extend the construction without carrying it a great way further, and without carrying it to matters which there is every reason to believe were not within the contemplation of the legislature, and were not intended to be within it, then I say it is a wrong mode of construing a statute, and above all a penal statute, because you are afraid that it may be evaded unless you extend it; to extend it so far as to include not only that which is an evasion of the statute, but that which there is every reason to believe the legislature never intended to prevent. Here it is quite impossible to confine it. If you adopt the argument of the attorney general, and say that every description of equipment with the intent is forbidden by the statute, you cannot confine the statute to a case where a vessel sails with a peaceful equipment, and another vessel comes after it with a hostile equipment. You must extend it to every case where a ship is being built or sold by a subject of this country to a belligerent. It would equally apply, although the contract was that a man should build the ship and run the blockade with it, and deliver it in a port of one of the two belligerents.

Therefore the real question which you must consider is the question which I adverted to at the first, which has been so much argued, namely, was it really meant by this

statute to forbid the building of a ship of war intended for one of two belligerents? That it is clearly lawful to do, according to every rule of international law.

My lords, I believe that a great many passages have been cited, but there is one which, as far as I know, has not been cited; if it has been cited, it was cited when I was out of court. It is in the third book of Vattel, chapter 7, section 110. I am citing it from Mr. Twiss's book on the Law of Nations, the second volume, at page 460. He says this: "If a nation" (and then Mr. Twiss says, "by which Vattel means the domiciled subjects of a nation") "trades in arms, timber for ship-building, ships, and warlike stores, I cannot take it amiss that it sells such things to my enemy, provided it does not refuse to sell them to me also at a reasonable price." There he says, "If a nation trades in ships, I cannot take it amiss that it sells such things to my enemy, provided it does not refuse to sell them to me also at a reasonable price. It carries on its trade without any design to injure me; and by continuing it in the same manner as if I were not engaged in war, it gives me no just cause of complaint." Now there is the distinction. If you simply build a ship ordered by one of two belligerents, fit it out so that it may sail away, and send it away, you are simply trading in the ordinary peaceful manner as if no hostilities were going on. If you fit out ships, engage mariners and marines, put arms on board, and equip them for immediate hostilities, and send them out in a fit state to commit hostilities, you are doing something which in times of peace nobody would think of doing at all. You are not carrying on a peaceful trade, but you are doing something which, if there was no war, you would not think of doing, and which, if you do, is an assistance to one of two belligerents. But if you simply sell a ship, and abstain from warlike equipment, and deliver it anywhere, I do not care where, either in a port of this country or in a port of the belligerent itself, you are simply carrying on a trade which is ordinarily carried on in peaceful times, and the belligerent has no right to say that, it being lawful by the law of your country, it is an injury to him. Then he goes on to say, "In what I have said above, it is supposed that my enemy goes himself to the neutral country to make his purchases. Let us discuss another case, that of neutral nations resorting to my enemy's country for such purposes; it is certain that as they have no part in my quarrel, and are under no obligation to renounce their commerce for the sake of avoiding to supply my enemy with the means of carrying on the war against me, should they affect to refuse selling me a single article, while at the same time they take pains to convey an abundant supply to my enemy, with an evident intention to favor him, such partial conduct would exclude them from the neutrality which they enjoy; but if they only continue their customary trade, and do not thereby declare themselves against my interest, they only exercise a right which they are under no obligation to sacrifice."

That being the rule, therefore, of international law, it being no offense of which the other belligerent is entitled to complain, that the subjects of this country sell their ships simply to one of the two belligerents, and enable them to supply themselves with ships of war, provided that no armaments are fitted out, and that the ports of this country are not made hostile ports from which vessels can sail, is there any reasonable ground on the words of this section to suppose that it was the intention of the legislature to make it illegal for the ship-builders of this country to carry on their ordinary trade of building ships as they carry it on in time of peace? If that is not contrary (as it is plain it is not contrary) to the rules of international law, surely the court is not to strain this section for the purpose of carrying it beyond what any rules of international obligation make it necessary for this country to comply with. If the section may admit of both constructions (and surely it cannot be put higher than that) it is impossible to read this section without seeing that it admits of the construction for which I contend, if I do not put it higher than that.

LORD CHIEF BARON. Can you make out that the language applies equally to either of the two things, and that therefore the criminal jurisprudence would be bound not to extend it, so as to make that a crime which before was lawful, beyond the clear meaning of the words of the act? The question is, whether you can make that out.

MR. MELLISH. My lord, that depends upon this, whether the words, "as a transport or store-ship, or with intent to cruise or commit hostilities," may not reasonably be taken as being governed to a great extent by "equip, furnish, or fit out," so that they describe the particular equipment, furnishing, and fitting out which is intended by the statute.

My lords, that is the view which I venture to take, and which I submit is the proper view of this statute; and that being the view, I think it can hardly be denied that this verdict was perfectly right and perfectly satisfactory; for I think I might say that there was no evidence at all (certainly there was no reasonable evidence) that there was any intention on the part of anybody to put a hostile equipment, and still less arms, on board the *Alabama*, in the ports of this country. Looking at the facts, they render the matter so plain that nobody can have a doubt about it. The affair of the *Alabama* had already happened; everybody was alive to the foreign enlistment act. The government and their officers were alive to it; they had thought about stopping the *Alabama*, but had not done it. The American minister, the American consul, were

alive to it. The agents of the confederate government were alive to it. Everybody knew that no vessel, of which the destination was at all doubtful, would be allowed to leave this country in an armed state. The officers of the government in Liverpool, as everybody knew, were looking after the *Alexandra*. The agents of the American consul were known to be looking after the *Alexandra* every day; it was simply impossible to put any warlike equipment or any guns on board that vessel, without her being seized directly. Everybody knew it, and everybody agreed, that if the hostile intent and destination was proved, if the guns were put on board, it would be a case within the act. There was a doubt, as there is a doubt whether a peaceful equipment was within the act. But can it be doubted for one moment, when all that had happened in the case of the *Alabama* was in the mind of everybody, and had just happened, and when you find no hostile equipment on board, and that according to the evidence they had carefully avoided putting not only guns, but the preparation for guns on board—can anybody doubt that they purposely avoided putting any hostile equipment or any guns on board? In fact, that was practically admitted in the reply of my learned friend the attorney general; and if our construction of this act of Parliament be right, and if it be correct that the only equipment which is made illegal by this statute is a hostile equipment, no one, as I submit, can doubt that this verdict was perfectly satisfactory. It was left to the jury what the intention was—it was left to them what the actual equipment was, and no one can doubt that if our construction be right, namely, that a hostile equipment was necessary to bring the case within the statute, this verdict was quite right.

My lords, there is only one other point to which I wish to call the attention of the court, and that is a point which I believe has not yet been mentioned. I submit to your lordships that this is not a case in which the court can grant a new trial upon the ground that the verdict is against the weight of the evidence, or on any other ground except that there has been a positive misdirection. I should submit that the mere ground of the verdict being against the weight of the evidence, or the mere ground that it is unsatisfactory, or the mere ground that there was an omission to direct the jury, is not a ground upon which any new trial can be granted; but that a new trial can only be granted upon the ground that there has been a positive misdirection.

My lords, the rule, as I apprehend it, is clearly this: If you have an entirely civil proceeding—civil in form, and civil in substance—the court can grant a new trial, either on the ground of misdirection, or on the ground of the verdict being against the weight of the evidence. If you have an entirely criminal proceeding—criminal in form and criminal in substance—the court can grant no new trial at all, either on the ground of the verdict being against the weight of the evidence, or on the ground of misdirection. But if you have a proceeding which is in form civil, but in substance penal, the court can grant a new trial, not on the ground of the verdict being against the evidence, but on the ground only of misdirection.

My lords, that is laid down in the case of *Brook vs. Middleton*, which is in 10th East's Reports, page 268; it was a *qui tam* action for offenses against the usury act. The marginal note is: "The court will not grant a new trial in a penal action where the verdict has passed for the defendant on the ground of its being against the evidence." A rule *nisi* was moved for, and the court were not satisfied that they had authority by precedent, "in a penal action where a verdict had been found for the defendant without any alleged misdirection of the judge in point of law (as in *Wilson vs. Rastall*, 4 Term Reports, 753) to grant a new trial; and they ordered the matter to stand over, to give them an opportunity of looking into the precedents, Lord Ellenborough, chief justice, saying that if the court did not find themselves precluded from entertaining the motion on the ground of the verdict being against the evidence, they would hear Garrow further upon it. And before the court rose on this day, his lordship referred to the case of *Fonnereau vs. —*," which is reported in 3d Wilson, page 59, "where the court said that the rule had been laid down for fifty years past not to grant new trials in actions on penal laws where the verdict was for the defendant. There, indeed, the doctrine was laid down rather too generally, as the court would certainly grant a new trial in case of the misdirection of the judge in point of law; but in case of a verdict against evidence, the rule was now settled that no new trial would be granted, which was sufficient to dispose of the present motion."

My lords, there is another case, namely, the case of *Hall vs. Green*.

MR. BARON BRAMWELL. Is that more recent?

MR. MELLISH. It is not a very recent case.

MR. BARON BRAMWELL. Ten years ago?

MR. MELLISH. In 1853. It is reported in 23d Law Journal, (Magistrates' Cases,) page 15; it is also reported in 9th Exchequer Reports, page 247. I am citing from the Law Journal, because I think that the observations of the judges are a little fuller there. It was an action for penalties, under the 25th of George II, for having public music and dancing without a license. Mr. Montagu Chambers "moved for a new trial on the ground of misdirection, and also of the verdict being against the evidence." He says, "The learned judge misdirected the jury in leading them to suppose that the question

was, whether the keeping the rooms as a hotel was the principal or the incidental purpose." I remark upon that, because it is something of the same objection which is made here. He says: "This tended to mislead the jury; it is unimportant that the company frequenting the room is respectable," and so forth. PARKE, BARON. I do not think it matters which purpose was principal and which accessory. The judge ultimately directed the jury rightly in desiring them to consider whether it was kept for both purposes. There was therefore no misdirection; and in a penal action no new trial will be granted on the ground of the verdict being against the evidence." Then Mr. Montagu Chambers says: "That is the old law;" and then Baron Parke says: "It is not the worse on that account." And then Baron Parke, in giving judgment, says: "The fact of the verdict being against the evidence is no ground for a new trial in a penal action. That is the old law, and there is no ground for overruling it." And Baron Alderson says: "There is no misdirection in this case. The jury, in answer to the judge, found that the room was kept for purposes of entertainment only. That, in my opinion, was a wrong verdict, but we cannot set it aside on that ground. If an improper verdict of not guilty is found in felonies and misdemeanors, the courts do not set it aside, holding it to be better that the guilty should escape than that the matter should be tried over again. And this is a salutary rule."

MR. BARON BRAMWELL. I am sure that I can mention that that was a very strong case, for how the jury came to find a verdict for the defendant (I was counsel in the case) I cannot understand.

MR. MELLISH. Was your lordship counsel for the defendant?

MR. BARON BRAMWELL. Yes, I was for the defendant.

MR. MELLISH. My lords, there is another case which, perhaps, I ought to mention, because there is something which it may be said is the other way, and I wish to bring this point fairly before the court.

MR. BARON BRAMWELL. In the case of *Hall vs. Green*, you may really take it that it was about as strong a case of the refusal of the court to grant a new trial where the verdict was against evidence as it is possible to be. I can state that of my own knowledge.

MR. MELLISH. My lords, there is the case of *Robinson qui tam* against Lequesne, which is in Bunbury's Reports, page 253: "Upon an information of seizure of jesuits' bark on the stat. 14 Car. 2, cap. 11, sec. 12, for fraudulent exportation of jesuits' bark, two casks out of six being dust. There was a verdict for the defendant, and now a motion was made for a new trial; but *per totam curiam* it was denied." Then it is said, "*Nota*. It seemed to be admitted in a case of this nature a new trial might be granted if the fact would have admitted of it; and the counsel for the plaintiff were prepared with precedents (if they had been called for) to that purpose." That is the only kind of authority which I find at all the other way. And that is not an authority, it is merely a note. The court would not grant a new trial, but there is a note which is the only authority that I can find at all the other way.

Now, my lords, can any real distinction be drawn between an ordinary *qui tam* action and such a proceeding as this? This is in its form a civil proceeding; so is a *qui tam* action in form a civil proceeding. Can it be said that this is not a proceeding of a penal nature?

MR. BARON PIGOTT. The claimant gets his costs from the Crown here, I suppose?

MR. MELLISH. I believe he does, my lord, under some modern act; he would not get them at the time when the foreign enlistment act was passed.

MR. BARON PIGOTT. And so the defendant does in *qui tam* actions.

MR. MELLISH. Yes, my lord.

MR. BARON PIGOTT. Therefore it makes no distinction.

MR. MELLISH. You get your costs under a modern act; at the time when the foreign enlistment act was passed you would not get them.

MR. BARON PIGOTT. That was not the reason evidently, because in a *qui tam* action the party had his costs.

MR. MELLISH. My lords, I would simply say, can any real distinction be drawn; is not this quite as much a penal proceeding as a *qui tam* action would be?

LORD CHIEF BARON. It is a forfeiture resulting from the commission of a crime; that is what the case is. If a crime has not been committed, there is no forfeiture. The act expressly says that the party shall be guilty of a misdemeanor, and be liable to fine and imprisonment, and the ship shall be forfeited. If there be no crime committed no ship is forfeited.

MR. MELLISH. The only ground on which I can see that it can be put is that it may be said, as Mr. Baron Bramwell said in one part of these proceedings, that it was a voluntary act on the part of the claimant coming in, and so that he is not in the nature of a defendant. I confess that, if I may be allowed to say so, it seems to me about as voluntary as if a man put a pistol to your head and asked you to deliver your purse, and you delivered your purse voluntarily to him. Here the Crown commences the proceeding by seizing your ship.

LORD CHIEF BARON. On the ground that you have committed a crime.

Mr. MELLISH. And you come in and claim it.

LORD CHIEF BARON. You come in and say that you are innocent.

Mr. BARON BRAMWELL. I think that, in defense of my expression, I may be permitted to say that the case is more like this, that the man having got your purse, holds a pistol to your head if you intend to take it back from him; you would be something of a volunteer then if you went and attacked him.

Mr. MELLISH. The law does not give a man the power of taking my purse from me, but the law does give the Crown the power of taking my ship from me, and I cannot resist it; the law gives me no means to resist it; it would be an illegal act, however innocent I was, if I resisted the Crown when they came and took it. Therefore the Crown take it, and this is a proceeding by which a party recovers it; and if it be, as Baron Alderson says, a most salutary rule that the guilty should escape rather than that the subject should be oppressed by trying the same question over and over again, surely it would apply to a proceeding of this nature quite as much as to any other. Surely it cannot be urged that it is any objection that here the Crown is the party proceeding; it can hardly be said that the Crown has a prerogative to have a new trial on the ground of the verdict being against the weight of the evidence which the subject would not have. On the contrary, it is more necessary that the law of the land should be adhered to which prevents a new trial, the object of which is to prevent a person being vexed over and over again by proceedings of this kind after he has got the verdict of the jury for him in matters which are in their nature of a criminal and of a penal description.

Mr. BARON CHANNELL. In a case in 11th Meeson and Welsby, if it is worth while to look at it, it is said, "The court has authority to and will grant a new trial in a penal action, though the verdict be for the defendant, where they are satisfied that the verdict is in contravention of law, whether the error has arisen from the misdirection of the judge, or from a misapprehension of the law by the jury, or from a desire on their part to take the exposition of the law into their own hands."

Mr. MELLISH. I think it will hardly be said that the jury would take the law in this case into their own hands.

Mr. BARON CHANNELL. It is in reference to that part of the matter as to which it may be argued that though the lord chief baron's direction was not strictly incorrect, the jury may have misapprehended the effect of it.

Mr. MELLISH. Will your lordship be kind enough to mention the name of the case to which you have referred?

Mr. BARON CHANNELL. It is the case of the attorney general *vs.* Rogers, in the 11th Meeson and Welsby, page 670.

Mr. MELLISH. Did the court there grant a new trial?

Mr. BARON CHANNELL. No, I do not say that they did. You have been citing authorities from a digest; this is a subsequent digest.

Mr. BARON FIGOTT. Is it quite certain that in *qui tam* actions the defendant gets his costs if he succeeds?

Mr. MELLISH. He did not get his costs at the time of the passing of the foreign enlistment act; it is only by a subsequent act.

Mr. BARON CHANNELL. Although the rule may be right as you state it, the question is whether the court can grant a new trial where there has been no actual misdirection, but where the jury may have misapprehended what the judge has said.

Mr. MELLISH. I am not aware of any case. It is for your lordships to consider the point. I only throw it out.

Mr. KEMPLAY. If my learned friend, Mr. Mellish, felt it necessary to apologize for rising to show cause against the rule after my learned friends who had preceded him, I am sure your lordships will feel with me that I ought to apologize for rising after he has addressed the court, because it is exceedingly difficult to pick up anything after he has dealt with the subject in hand; and certainly it would be impossible to express anything more clearly and intelligibly than he has done. But in a matter of so much importance I do feel that I should like to address to the court one or two observations upon the construction of the seventh section of the act, which seem to me to have a very strong tendency to support the view which he has already pressed upon the court.

The position taken by the attorney general in moving this rule is distinctly this, that unless your lordships deviate from the plain words of the act, you must say that any species of equipment, any species of fitting out, with or without arms, (provided it is done with the intent that the vessel shall be employed in the service of a foreign state,) is struck at by the act. That would be, I submit, such an unreasonable—I was going to say such an absurd—result that I am quite sure your lordships will not adopt it, if there is another construction which the section will admit of. Just look at what it would lead to. Supposing there is in this country a merchant vessel fitted in every respect as a merchant vessel, but of such strength as to be capable of being easily turned into a vessel of war; and supposing a person here, a friend of the confederates, purchases that ship with the intention of taking it out of the country and converting it into a ship of war, but that the vessel requires an anchor; can it be pretended for

one moment that if anybody supplies that vessel with an anchor in order to enable it to depart from this country, and somewhere else to be converted into a ship of war, that is an offense intended to be prohibited by this section? I might quote other cases, but that is sufficient for the purpose of illustrating that which I wish to present to the court. I think the court will not put that construction upon it if there is another reasonable construction to be put upon it. The construction I put upon it is this—and I call the attention of the court to the section for a moment, to see how fully the words of the section bear it out—I say, the “equipping, furnishing, fitting out, or arming” that is spoken of in the seventh section must be of that distinctive kind which is requisite to make the ship a ship of the kind alluded to, either a transport or a store-ship, or a ship to cruise and commit hostilities. Before I turn to the words of the seventh section, I will ask the court to suppose that the words “with intent,” where they occur secondly in that section, are omitted. I may ask that, because I have no doubt my learned friends on the other side will say it is the same effect as if they were out; and it is exceedingly probable that they have been introduced incautiously, because if you look at the corresponding section of the foreign enlistment act of the United States, you will see that they do not there occur; the words there are, “equip or be concerned in equipping any ship or vessel with intent that such ship or vessel shall be employed in the service” of so and so, “to cruise and commit hostilities;” and I think it is very probable that when this section was adopted to a certain extent for our act, and it was intended to introduce the provision as to a transport and store-ship, and the alternative “or” had to be introduced, that the words “with intent” were put in incautiously. The seventh section, then, in effect would be this: “If any person within her Majesty’s dominions shall equip,” &c., “any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign state” “as a transport or store-ship, or to cruise or commit hostilities;” or in effect it would be this, “to be employed as a transport or store-ship, or cruiser, or privateer, or vessel of war against a state with whom we are at peace.” That, I submit, would be the grammatical and true meaning of the section; and what I say is this, that the equipment referred to here must be of that distinctive character which has reference to the particular purpose to which the vessel is to be applied. Your lordships must not lose sight of the purpose for which it is to be used. I am not speaking of the criminal intent, but looking at the purpose, the result. And it is a great mistake to suppose that the whole turns upon the intent with which the act is done. I utterly deny that that is the view you are to take of this section. The intent prohibited here is no doubt a material question; it is absolutely material; but you must not allow the glare of that to blind your eyes from seeing what the thing itself is which the act prohibits to be done; and in order to ascertain that I submit you must look to the purpose for which the vessel is to be applied.

With those preliminary remarks, let me come to the section itself. And first of all with regard to the words “equip, furnish, fit out, or arm,” the three first words, viz, “equip, furnish,” and “fit out,” it seems to be conceded all substantially mean the same thing. Now, “equipping” a privateer certainly, I think, in the common meaning of the expression would include “arming.” I think there can be no doubt about that; but it was necessary to add the words “or arm” for this reason, that a vessel might be perfect, in every respect, as a vessel of war, short of arming; there might not be any fittings required to make that vessel complete except the arming, and therefore it was necessary to have the words “or arm,” because if they had not been there, then the vessel might have been said not to have been “fitted out,” but “armed” merely, and I conceive that is the reason why those words are introduced.

Now, let me carry your lordships to the words of the act as to the purpose to which it is to be applied—“with intent or in order.” I do not think there is much difference between those two expressions; but if anything, the second expression seems, as has been already pointed out by my learned friend, Mr. Karslake, to point to the purpose to which the vessel is to be employed. “With intent or in order” to do what? Is it with the intent or in order that the ship may be afterward converted into a ship of war? No. It is “with intent that such ship or vessel shall be employed in the service of a foreign state.” Now what is the meaning of “such ship or vessel?” I contend that it means such vessel so equipped, so furnished, so fitted out. It has reference to the *status* of the ship, as produced by that furnishing, fitting out, or equipping—“with intent or in order that such ship or vessel shall be employed;” then come the words, “in the service of.” Now I do not think it is unimportant to attend to those words, “in the service of.” It is not “by” the foreign government, but it is to meet the very case that was to be provided against, namely, fitting out privateers in neutral territories to be employed in the service of a foreign state with whom the government is at peace. Then we come to these words—“in the service of a foreign state,” and so on, “as a transport or store-ship,” or, as I have already submitted to the court, a cruiser or vessel of war; and what the act points to is, the producing of that which is in a condition to cruise and commit hostilities, and the purview and intention of the act was to meet that case, and that case alone. It is a mistake to suppose that it was

intended to meet the case of those particular contraband things, soldiers and ships of war. It was nothing of the kind; it was not intended to prohibit, and it does not in effect prohibit, the building of ships of war; it only prohibits its being done with intent to be employed in the way pointed at in the section; because it is conceded that you may build a vessel of war; that you may build it armed at all points, and sell it to one or other of the belligerents. Therefore it was not intended to prohibit our doing that, or to prevent contraband of that description leaving this country and going to one or other of the belligerents. The object of the statute, so far as foreign enlisting goes, is exclusively to secure the allegiance of the natural-born subjects of the Crown. It is not confined to times of war, it is equally applicable to times of peace, and it is equally applicable to a case of this kind, viz, soldiers enlisting, for instance—to take a familiar case—in the service, say, of the Sultan, during the time of the war with Russia, though the soldiers would have been enlisted to fight on the same side as ourselves; therefore, so far as foreign enlistment is concerned, it is to maintain the allegiance of the natural-born subjects of the Crown, and to prevent their being interfered with, directly or indirectly. Then as regards the equipment of vessels, I submit that it is to prevent the ports of this kingdom being made military stations, in effect, for one or other of the belligerent powers, which would be a breach of the use of a neutral territory which no nation ought or would be justified in submitting to. If it might be done by one, it might equally be done by the other, but it would be impossible to allow it to be done without its leading to a collision of forces in the neutral territory. It is to prevent the belligerents having the benefit of the neutral territory to use it in that particular way.

Before I sit down let me add one word as to the case which, no doubt, will be very much relied upon, the case of the *United States vs. Quincy*, which has been alluded to several times. It is very remarkable that the American act varies from ours in the wording of it; and it seems to me that it might very well be that in the construction of that act it would be necessary to adopt the view adopted in the case of the *United States vs. Quincy*. The third section of the American act provides that “if any person shall fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming.” It is quite clear, therefore, that the former part of that section, using the conjunctive “fit out and arm,” seems to put a meaning upon “fitting out,” which would not include “arming.” The section itself, coupling the two and saying “and arm,” puts upon “fitting out” a meaning that might be supposed not to include arming. It is a fitting out independently of arming, otherwise there would have been no necessity to have added “and arming.” Therefore, when you come to the next clause of that section, “or shall knowingly be concerned in the furnishing, fitting out, or arming,” it might well be that the courts of the United States would be bound to put that distinctive meaning. But it does not at all follow that that is necessary in construing our enlistment act, because the words are there disjunctive from the beginning, “equip, furnish, fit out, or arm.” And I have already suggested to your lordships the reason of the addition of the words “or arm” to meet a case where everything else was done short of arming.

MR. BARON CHANNELL. If I understand the indictment in this case which you have cited of *Quincy* in 6th Peters, that was an indictment on the last branch of the statute, which charged him with being concerned in the fitting out. There the word “or” was advisedly substituted for the word “and,” to be found in the other instances. We have the word “or” in every case in the present act.

MR. KEMPLAY. Yes, my lord. What I am suggesting to the court is that the peculiar construction of the American act might render it necessary to put a distinction between warlike equipment and innocent equipment; it may not be necessary, nor, as I submit, is it necessary, in our case to do so; but if you look at the purpose for which the vessel is to be employed, and you then apply the words “equip, furnish, fit out, or arm,” with reference to that purpose, provided the thing is done for that purpose, then it becomes illegal if done with the intent that that purpose should be carried out, and the act of any person aiding and assisting in that purpose, however far he may fall short of accomplishing the purpose, if it is done with that intent, if it is done in attempting to accomplish that purpose, provided it includes the purpose, would be contrary to the act, but it must be something that has reference to that ultimate purpose. Suppose the case of workmen who are working upon a ship, fitting out the ship, it would scarcely be contended that they had anything to do with the ultimate purpose of its being employed; but if you can make out that they are knowingly aiding and assisting with the intent that it shall come to that result, namely, that it shall come to the result of being a vessel fit to cruise and commit hostilities, then they might be guilty equally with other people.

Now, my lord, I was intending to say something upon the intent, but I do not think I should be justified in doing so after the arguments which have been already addressed to the court upon that point. But one word as to the evasion of the act. I conceive that in order that a thing may be said to be an evasion of an act, that is, in the sense

that it would be a substantial infringement of the act, there must be something in what is done that is expressly prohibited; it is not enough if it is something that might possibly have been provided for if it had been foreseen, but it must contain in itself something of that which is prohibited. Now I will give a familiar illustration to explain what I mean: If a vessel of one of the belligerents takes its station in neutral waters for the purpose of being ready to pounce upon a vessel of the other belligerent, and availing itself of that advantage does so, that is a breach of our neutral territory, and that is something that we should complain of, and justly complain of. Other instances might be put of a similar kind. But suppose I make a domestic rule in my house that no servant shall in my house wear a particular dress, say a dress of a particular color; and suppose my servant employs herself in making a dress of that particular color, but never intends to use it in my house, never intends to infringe what I have prohibited, but gets a holiday, and then puts the dress on outside my house, not inside, how can you say that that is an evasion of the law which I have established? It is not; because how can you tell that I have any objection to my servant wearing the dress outside? All I have done is to say it shall not be worn inside; you must have in the thing that is done something of the element of that which is itself prohibited. Now, is there anything in the case, say, of the Alabama—

MR. BARON BRAMWELL. Suppose you promulgate your law to your servant with a preamble that the wearing of a silk dress by your servants was very injurious to them, inasmuch as it necessitated their spending more money than they could honestly earn, and you prohibited the wearing of silk dresses by your servants while in your employ; and suppose one of your servants were to put on a silk dress directly she got out of doors, and were to say, Mind, I have got a holiday, and I am not in your employ.

MR. KEMPLAY. I should hardly agree with your lordship that she was not still in my employment. I think that would be begging the question. I do not put that case. I should say she is still in my employment.

MR. BARON BRAMWELL. You would say she was still in your service, though she was at a tea garden and enjoying herself?

MR. KEMPLAY. Certainly. That would contain in it the element of that which I had prohibited, and I might charge her with having done the thing prohibited, and give that in evidence that she had done so.

These are all the observations that I think myself justified in troubling your lordships with, and I think I ought again to apologize for having done so, but in a case of so much importance I thought it desirable to present them to you.

(The court adjourned for a short time.)

MR. MELLISH. My lord, before the attorney general commences his address, I should like to call the attention of the court to a printed copy of the decree made by the judge of the admiralty court at Nassau, with respect to the *Oreto*, which has been sent to me by Sir Hugh Cairns. It appears that she was seized on the ground that the captain of her attempted to equip, furnish, and fit out the ship, with intent that she should be employed in the service of the Confederate States. The judge says, "To support the libel it is necessary that proof should be given: 1. That the aforesaid parties, having charge of the *Oreto* while the vessel was within the jurisdiction of the vice-admiralty court of the Bahamas, attempted to equip, furnish, and fit her out as a vessel of war. 2. That such attempt was made with the intent that she should be employed in the service of the Confederate States of America, and, 3. That such service was to cruise and commit hostilities against the citizens of the United States of America. Witnesses have accordingly been produced to prove that the *Oreto* is constructed for and fitted as a war vessel; that acts have been done in her since she came to Nassau which constitute an attempt to equip, fit, and arm her as a vessel of war; that from certain conversations which were overheard between the master of the vessel and a person who came out passenger in her, and from certain acts done by this person, there is proof that she was intended for the service of the Confederate States of America, and to cruise against the citizens of the United States. It has been contended by the proctor for the respondents that proof ought also to have been given that her Majesty, the Queen, was at peace with the United States of America, as the court cannot take judicial notice of that fact." Then he goes on to say that "the court is bound to take judicial notice of her Majesty's proclamations, and that in the proclamation of the 13th of May, 1862, the Confederate States of America are named, and it is also alleged that her Majesty is at peace with the United States of America, and that as the allegation in the libel, that there was no license from her Majesty to fit the *Oreto* as a vessel of war, has not been traversed, the court has a right to assume that it is admitted. A responsive plea has been put in by the defendants: 1. Denying that there was any agent of the owners, or persons interested in the *Oreto*, of the name of John Lowe, on board of her, as affirmed in the libel; that the said Lowe was merely a passenger, and never exercised any power or control over the vessel. 2. Denying that James Alexander Duguid, the captain, or any person exercising authority over the said steamship, attempted to equip, furnish, or fit out the said ship, with intent that she

should be employed in the service of the Confederate States of America, to cruise and commit hostilities against the citizens of the United States. 3. That while the Oreto lay in the river Mersey, immediately previous to her sailing for this port, British men-of-war frequently passed and repassed her, and that she was at all times in a conspicuous and public position, without having been seized or arrested, or subjected to detention, and that she quitted Liverpool in the open day, without any manner of haste or secrecy; that the master, while she was so lying in the Mersey waiting instructions from the owner, directed the mate to employ the crew during their leisure hours in doing ordinary ship's work, fitting gear, strapping blocks, &c., during which time, as well as after she sailed, certain spare blocks which were then on board, and which were intended solely for the use of the ship, as part and parcel of her rigging, and not in any way whatever as blocks for gun tackles, or as part of the furniture of guns, were strapped by the said crew, and the said blocks were never known as or called gun-tackle blocks until a certain Edward Jones, a man of infamous and abandoned character, who had been shipped on board in the capacity of boatswain, called them gun-tackle blocks. That neither the said Alexander Duguid, nor any person whatsoever having authority over the said steamship during the time she was at the port of Nassau, ever gave any orders or directions to strap blocks as gun-tackle blocks, or to strap any blocks whatever. But any blocks which may have been strapped on board the said ship were done by the seamen of the Oreto, in their ordinary avocations, and is always done on board merchant ships, in order that they might have employment on board, and not for the purpose of fitting the Oreto as a vessel of war. 4. That no faith or credit ought to be given to the depositions of Charles Ward, a witness of the party proponent, that he is a man of abandoned character, and is actuated by malicious and vindictive feelings against the said James Alexander Duguid, and has sworn falsely for the purpose of carrying out an avowed intention of doing an injury to the said J. A. Duguid. On the evidence given in support of this plea I shall remark as I proceed. The evidence which has been produced in support of the prosecution may be classed into two parts. 1. That which relates to circumstances which occurred *before* the vessel arrived within the jurisdiction of the admiralty court of this colony. 2. That which applies to facts done *subsequently* to such arrival. To the first division belong the construction and fitting of the vessel before she left England, the flags and other materials which she had on board when she sailed, and the conversations or remarks of the parties in charge of her while on her passage from England. To the second division belong the proceedings on board the vessel after her arrival within the jurisdiction of the Bahamas vice-admiralty court. From the evidence appertaining to the first division, I abstract the following, which is all that I think in any degree material." Then it states the evidence of the chief mate, Mr. Duggan, who says, "The number of men, all told, on board was 52 or 53. I believe that was an ordinary crew. We had not too many. We had no cargo. The Oreto was fitted (when she left England) as she is now. All vessels are not fitted alike. I have seen some ships fitted, with regard to bolts, in ports, as she is. I have seen vessels intended to carry cargo fitted as she is. Some of Green's and Wigram's ships are so fitted. There was a passenger on board whose name was Lowe. He did not, to my knowledge, exercise any authority over the ship. In the cross-examination Mr. Duggan says, 'I had access to every part of the Oreto. I have gone right through the vessel. I have never seen any implements of war or any ammunition on board of her.' Then there was a seaman of the name of Porter, who 'deposes that the vessel had no stowage room for cargo. She was not fitted as merchant vessels usually are. She had a magazine. He says, I believe there were shell rooms; was in a room where shells were stowed. She had light-rooms; they are not usual in merchant vessels. She had boxes for shot. She had two gigs, a life-boat, pinnace and dlukey. I took her to be a gunboat. We had a passenger named Lowe on board. As far as I could see, Mr. Lowe had a little authority on board; on one of the mess-kids being broken, I heard Mr. Lowe say to Captain Duguid, he ought to take better care of the things. Mr. Lowe has given me different orders, and told me to steer different courses when I was at the helm.' Then there is a fireman of the Oreto, named Irving, who states, 'I have served on board steamships before. I have been so serving six or seven years. The Oreto was not fitted like steamships I have been serving in before; they were merchant ships and passenger vessels. I did not see any cargo on board the Oreto. There were shot and shell boxes, and a place which the crew called a magazine. I know a flag they call the confederate flag. I saw one on board the Oreto; I saw it on the quarter-deck before we came in here; I saw it among the other flags. There was an American and a French flag.' Then he gives evidence with reference to the passenger named Lowe. Then there was evidence given on the other side by Captain Duguid, who denied some conversations which had been imputed to him. Then there is some evidence as to some shells having been put on board and taken from on board; but I cannot occupy your lordships' time by reading through the examinations. There is a great deal of evidence about putting on board some blocks. Then the witness says: 'The strapping of the blocks now alone remains to be considered. While the vessel lay at Cochrane's anchorage, straps were put on some blocks which had been brought

in her from England. The blocks so strapped might be used as gun-tackle blocks, but blocks so strapped might also be used for the ordinary purposes of a merchant ship.' What proof is there, then, that they were to be used as gun tackle? 1. It is contended, because they were named gun-tackle blocks in an entry in the ship's log-book, and were so called by some of the crew; 2. Because there were more of them than could be required for the ordinary use of the ship as luff-tackle or watch-tackle; and then it is argued, if the blocks were intended as gun-tackle blocks, the *Oreto* having been constructed as a war vessel, it is to be inferred that they were intended for her equipment. The other side, in reply, contend, 1. That as the tackle might be used for either of the purposes before mentioned, the mere circumstance of the mate in his entry in the log-book, or some of the crew not knowing for what they were really intended, choosing to call them gun-tackle blocks, is no proof whatever that the owners of the vessel intended to use them as such; 2. That the evidence of Captains Parke, Raisbeck, Waters, and Eustace, all master mariners and men of much experience, has proved that the number of blocks on board the *Oreto* is not at all greater than would be required for the ordinary purposes of the ship, especially as she is a new vessel, on board of which a greater number of spare blocks is usually provided than is to be found in vessels that have been in use. That Captain Duguid unequivocally states in his evidence that the blocks were solely for the ordinary use of the vessel, and were never intended to be used as gun-tackle blocks. That he never ordered them to be strapped as such, or heard them called so until he heard the evidence given in court." Then he goes on to say, "Comparing, then, the evidence on the one side with that on the other, I agree in the opinion that the mere fact of blocks which might be used for other purposes being called gun-tackle blocks by persons who did not know for what purpose they were intended, is not proof that they were intended to be used as gun-tackle blocks. I think that as the fact of there being more blocks on board the *Oreto* than were required for her use, is a matter of professional opinion; and as the opinion of several master mariners, quite competent to form a correct one, has been given in evidence, that there were *not* more blocks on board the vessel than might be required for ordinary use, I ought not, in the absence of any valid and producible reason for so doing, to adopt the opinion of one party in preference to that of the other. The consequence of which is that the fact of there being more blocks than could be required for the ordinary use of the vessel is not sufficiently proved." So that I understand the learned judge to have decided that the putting of those blocks on board, unless they were gun-tackle blocks, was not a sufficient equipment within the statute.

MR. ATTORNEY GENERAL. Read on.

MR. MELLISH. "Lastly, I see no evidence to invalidate the direct and positive testimony of Captain Duguid, that the blocks were not intended to be used as gun-tackle blocks. If there is not enough proof that the blocks in question were intended to be used as gun-tackle blocks, any observation as to the probability, arising from the conviction which I understand the learned judge to mean that whatever else might have been struction of the ship, that they were for her equipment, becomes unnecessary;" by proved, that is the only fitting on board the *Oreto* which took place in his jurisdiction, which was confined to the Bahamas. That whatever else was proved, it would not be a hostile equipment, and therefore would not be within the statute. "If the evidence given to prove that any act has been done here subjecting the vessel to the penalties of the foreign enlistment act is not sufficient for that purpose, it is, perhaps, superfluous to say anything about the capacity of the vessel to take cargo or her connection with the southern States of America." Then he goes into a further part of the case to inquire whether the ship itself was a ship of war; but his first ground, as I understand it, is, that there is not sufficient equipment within the jurisdiction of that court, because the only equipment that took place was putting on board those blocks, and those were not gun-tackle blocks. He says, "Perhaps it would be superfluous to consider anything more." But he does go on to consider it, and says, "I will, however, observe, that although the ship may not be calculated to carry the ordinary bulky cargo of merchant vessels, yet there are certain kinds of cargo of which she might carry a considerable quantity. For example, there were some hundreds of boxes of shells put on board of her, and those were stowed in a compartment called the shell-room. There yet remained what is called the magazine, the light-rooms, and other places, besides the cabin. Into these a very large number of muskets, sabers, pistols, and other warlike stores and ammunition might be stowed; and it is not improbable that a fast vessel of this description might be used for what is called 'running the blockade,' an employment which, however improper in itself, would not subject the vessel to forfeiture here." He goes on to say he is not satisfied that the vessel was intended to cruise or commit hostilities; that she might only have been intended for the purpose of running the blockade, which would not subject her to forfeiture under the enlistment act. But he says, as I understand him, it is necessary in order to prove an equipment within the jurisdiction of the vice-admiralty court, the putting of guns on board or things to be used for those guns.

MR. BARON CHANNELL. What was the decision?

Mr. MELLISH. The ship was let go; she went to a confederate port, and goes now on the seas under the name of the Florida.

Mr. BARON PIGOTT. Who was the judge?

Mr. MELLISH. His honor John Campbell Lees, judge of the vice-admiralty court of the Bahamas.

Mr. ATTORNEY GENERAL. It now becomes my duty to address your lordships on behalf of the Crown, and certainly I think you will be of opinion that the importance of this case has not been exaggerated by my learned friends on the other side. They have most justly and properly occupied a very considerable portion of your lordships' time in opening their case, and it will, of course, be my duty also to trespass at some length upon your lordships' time. I hope it may not be necessary to do so quite at the same length as those who have preceded me, but I am sure that at whatever length it may be necessary for me to trouble your lordships, I shall meet with your lordships' indulgence.

I will first take the argument of my learned friend, Sir Hugh Cairns, and state to your lordships what I have put down as the different heads of that argument. First, he says, and I cannot but think that there were traces of conscious weakness in his mode of arranging the argument, that the probable object of the statute is to be determined *a priori* by the rules of international law. Usually, my lords, we approach the question of the construction of a statute by a careful examination of its language and of its provisions. If there were a desire to warp the minds of a court and to withdraw the minds of the judges from the language of the provisions of the statute, I could imagine no better method of conducting the argument than, in the first instance, to enter into able and ingenious *a priori* disquisitions as to what may be the probable object of a statute of that description, to refer to some other test than the ordinary test of legal construction, and then to go into its history; for that was my learned friend's next point, after laying down the probable object; secondly, he says, the history of American and English legislation on the subject confirms this view. And when speaking of the history of that legislation, my learned friend also took a very unusually wide and discursive scope of argument. It is not very common, I think, in courts of law to hear Parliamentary debates ransacked, and the speeches of this and that statesman addressed to a deliberative assembly either when a bill was introduced or under discussion at other times referred to, for the purpose of laying down rules *a priori*, as to what were the objects of the statute, and to what rules of interpretation it is to be squared and accommodated; that also was a course and order of argument to my mind strongly indicative of conscious weakness. But then my learned friend came, thirdly, to the provisions of the statute itself. Your lordships will, of course, hear from me in due time of the many different interpretations of that statute, which upon this and upon the former occasion the counsel for the claimants have advanced. At present I confine myself to what I understand to be the result of Sir Hugh Cairns's argument upon that point. According to him, the provisions of the statute, rightly interpreted, confirm the view which he has advanced; they do not reach any case of a ship built within the realm for whatever purpose, with whatever intent, if her equipments, so far as they are completed or are meant to be completed within the realm, are *ancipitis usus*, and not of a distinctively warlike character. That I understand to be my learned friend Sir Hugh Cairns's proposition on the construction of the statute. Then his fourth proposition was with reference to authority. He reviewed the authorities in America, which he considered to go to the same point, and he referred to the absence of authorities in England as negatively tending the same way. Then he justified the ruling of the lord chief baron, and of course the verdict of the jury.

Now I propose, my lords, to meet that argument, and necessarily, in order to do it as I should desire, I must follow the order in which it was presented, though I have already told your lordships I do not think it the legitimate order in which to examine a question of this description; for I apprehend, if within the four corners of the statute you get the means of a proper interpretation, you have nothing to do with all those extraneous matters on which my learned friend Sir Hugh Cairns endeavored to base the whole or a main part of his argument. Still, my lord, as I must not assume that within the four corners of the statute there may not be that which introduces all or some part of those considerations, and as I know I have to deal with an antagonist of the utmost ability, whose ability was never perhaps more displayed in the discharge of his duty than on this occasion, I, of course, will pay that deference to his argument which is due to it, and I will endeavor to follow it in the order in which it was stated.

Now, in the first place, he did that of which I, of course, cannot for a moment complain. He referred to language which I myself had used in moving for this rule, as expressing at that time what had occurred to me as the purpose and object of the statute. I will not read to your lordships all the passage which he read from the print of my speech, which is at pages 52 and 53 of that print; one part will be enough for the purpose I have in view. I said, "It is plain that the object was to preserve the neutrality of this country, and to enforce it against the subjects of this country in matters in which the neglect of it by those subjects, or the violation of it here by

foreign belligerent governments, was thought calculated to lead to a position as regards foreign nations which would endanger the peace and welfare of the kingdom." Your lordships will perceive I refer there to the language of the preamble, and found my view of the language of the preamble upon that which is within the statute itself. My learned friend did not, as I understand him, quarrel materially with that statement, but he interpreted it in a manner which I find no foundation for in the statement itself, and which certainly I must respectfully dissent from, for the purpose of laying a foundation for the argument which he intended to advance upon that first branch of his case. He said in substance, It means therefore this, that the object was to enforce the performance of international duties; then he went on to say, that therefore international rules would be found to be, probably, the key to our municipal legislation on this subject, and to prescribe its limits. Not only, my lords, is no such doctrine to be found in the passage my learned friend has cited from my speech in this court, but it is a doctrine against which I have had occasion most strongly to protest in a speech which I made elsewhere; and though I feel deeply the honor paid to me in referring to anything which has fallen from me elsewhere, yet I cannot help thinking that it would have been better and somewhat more consonant with the usual way in which cases of this kind are discussed, if anything said to a totally different assembly and for a totally different purpose by me, whether right or wrong, had not been referred to in the course of this argument; but since it has been referred to, and since it has been imputed to me, if not here, certainly elsewhere, that there was some inconsistency between what I said in March and the duty I am discharging now, I take the liberty to say there was no such inconsistency, and that any one who endeavored with any degree of care to understand the words which I addressed to that other assembly, (I acknowledge I was not worthy that such care should be bestowed on my words, but those who refer to them ought to endeavor to understand them,) any one who did endeavor to read those words, feebly spoken as they might be in defense of the honor and dignity of my country, in another place, would see that the whole argument of that speech was to establish the directly contradictory proposition to that of my learned friend Sir Hugh Cairns on this occasion, and to say that the foreign enlistment act was a mere matter of municipal law; that it was not the exponent and expression of any antecedent international obligations which we owed to any other foreign government; that a foreign government had a right to expect from us the enforcement of that act, but only as a municipal act, and not upon international principles; and that the same authority which enacted it might, if it was thought wise and fit, abolish and repeal it, and that no foreign government whatever would have a right to complain if it did; that what the foreign enlistment act prohibited was not, according to antecedent rules of international law, a subject of complaint as between government and government recognized by those established rules, however likely it might be to become a subject of complaint owing to the varying circumstances of political affairs in different countries. That might be a right or a wrong proposition. I shall show your lordships, from authorities which I shall cite, that that was a true and correct proposition, according to some of the best American writers, and according to decisions in their courts; but certainly that is a proposition diametrically contrary to the fundamental proposition of my learned friend's argument, who says you are to square the interpretation of this statute by what he assumes to have been the prior obligations of this country to foreign belligerent powers. I say there were no such obligations, and that it is a total misinterpretation of international law to say that there was any state in the world which, according to the settled and established principles of international law, could have required this country to prohibit those things which were prohibited by that statute. I may be right or wrong in that, but certainly I am not inconsistent. I may also say here, in order that I may not be obliged to advert again to a subject to which I advert at all unwillingly, that any one who reads my speech will find that in it, rightly or wrongly, it was stated to be the opinion of the advisers of the Crown that the Alabama had offended against this act of Parliament, and should and would have been detained had she not prematurely escaped. And further, there was that which might be exceedingly superfluous, and not at all to the purpose; there was a statement of opinion which the speaker at all events entertained of the conduct of those merchants who made themselves parties to such acts in violation of the law of their own country, calculated, if not to involve the British government in hostile relations, at least to disturb the amicable intercourse between this country and other powers. Therefore I am not doing that which I hope no man in my position ever would do—endeavoring to obtain a decree of forfeiture against a subject upon grounds of law which are not honestly and sincerely believed to be just and sufficient by the government bringing forward those grounds. Most fallible those who entertain that opinion may be—your lordships are the judges of that. The question is one undoubtedly very far from being free from difficulty, of which we are well aware; but most assuredly we have not been guilty—I have not been guilty in the position in which I stand, nor was my predecessor—of an act so unworthy, I venture to say, of the office we fill, as to bring forward a case of this description, except on grounds which we ourselves believed to be sufficient.

Now, my lords, I will go to an examination of those rules of international law which my learned friend proposed to use as a guide to the interpretation of this statute. Certainly I think it will be found that they lead us a very small way, if at all, for that purpose. He said we may disembarraas the case of the rules applicable to the conduct of governments, looking to those which are applicable to the conduct of neutral subjects in war. You were referred to well-known doctrines laid down, not always, in identical terms, by different international writers, as to the right of the subjects of a neutral state during a war to carry on a trade in contraband articles with either or both of the belligerents; that, he said, was one principle; that there was such a right; that ships are like other things contraband of war, and that the general right to carry on a trade in those things, subject to the conflicting right of the belligerent to take and intercept them, was settled by international writers. I understand that he meant to say we must approach the interpretation of this statute with the hypothesis that it was probably not intended to interfere with that right. Then, he said, on the other hand, there was a second rule, namely, the rule which provides for the inviolability of the neutral territory by any proximate or immediate act of war on the part of a belligerent, or of the subjects of the neutral state instigated by a belligerent. He illustrated that by very well-known authorities and well-settled principles, mentioning the case of the *Twée Gebroeders* in 3 *Robinson*; namely, that it would be quite wrong for two cruisers to engage each other in neutral waters; that it would be equally wrong when an action was commenced beyond neutral waters to prosecute it by chasing into neutral waters; that it would be equally wrong to lie in wait and commence operations from neutral waters; and therefore that inviolability of the neutral territory from immediate or proximate acts of war was the second principle; and the corollary drawn from that was, that certain rules might be expected to be laid down as applicable to ships of this kind. In passing, I will just observe, that my learned friend, when he referred to the case of the *Twée Gebroeders*, and mentioned those examples of possible violations of neutral territory by belligerents, expressed some surprise at an observation made by me in the course of moving for this rule, viz, that I did not imagine it had occurred to any person that the prevention of a hostile collision in British waters between two ships, which two belligerents might be at the same time fitting out in either the same port or in two neighboring British ports, was one of the mischiefs that the statute was intended to guard against; and my learned friend thought I had overlooked the authorities he refers to. Indeed, my lords, I not only did not overlook those authorities, but it was the very recollection of that doctrine which prompted the observation I then made to the court. International law perfectly well settles that rule; and if any belligerent power should violate the neutral territory, international law provides a remedy, and the belligerent would, by the force of the insulted neutral, be compelled to make restitution and adequate reparation; and those rights being perfectly established, and being enforced, according to international law, with the highest and most sufficient sanctions, the sanctions of war and reprisals against the offending belligerent power, it was perfectly unnecessary to legislate with a view to prevent that which was really sufficiently guarded against by the existing international law. And I repeat, my lords, but with profound respect to any one who may be under a different impression, that though I have endeavored to refer to all the authorities I could meet with, both as to the history of this statute and of the American statute, I have never anywhere met with any suggestion, till the summing up in this case, that one of the things particularly meant to be provided against by the foreign enlistment act, either here or in the United States, was such a violation of neutral territory as that which I have been just describing; and I think it very plain that, this rule being well established, those very things which the foreign enlistment acts do, upon any interpretation which may be put upon them, prohibit, would be done, if they were done at all, consistently with an adherence to that rule of international law. It never, of course, would be supposed by any belligerent that if he might build ships, if he might buy ships, if he might equip ships within the neutral territory, he was, therefore, to be at liberty to use them hostilely within the same territory. Certainly the case was not one which was left unprovided for by international law, and I do not think it will be found that there is anywhere the least trace of an idea that to meet such an evil as that specifically, not to say singly or mainly, legislation was necessary. Now, my learned friend having referred to those two rules of international law, proceeded to deduce from them his own corollary; and in order to do him justice, perhaps, it might be as well that I should refer to what he said upon that point in his own language. It is at pages 79 and 80* of this report. He said: "What would be the conclusion which we naturally should draw from these rules as to the course which municipal legislation might be expected to take?" Then, after speaking of the definition of the line outside the dominions of a state, and of the three-mile rule, he proceeds: "Then we find that, according to the rules of international law, it is allowable to a neutral state, and to the subjects of a neutral state, to carry and to deliver outside that line, or inside it, any of those articles which are called contraband of war, guns, ammunition, ships, or any other article which may be supposed. Inter-

* See pages 186 and 187.

national law also holds that you might bring a ship to the outside of that boundary wherever it is drawn; that you might carry from the neutral state guns and ammunition, and warlike supplies of every kind, and deliver them into the ship outside the boundary, subject to the right of capture; the other belligerent, if so disposed and so able, might intercept the supplies, might capture the ship, and might seize the articles as contraband; but subject to that, the act might be done without any offense against the principles of international law. But then, on the other hand, international law says you must not originate on the neutral territory any proximate act of war; you must not issue out of the neutral territory with a ship which shall be prepared to commit hostilities." And a little afterward, at page 82,* he goes on to say: "The belligerent would say to the neutral power, 'Now we must have an understanding about this; you say that your neutral territory is to be inviolate, I agree to that. I have no right to go inside your territory and cut out a ship which I see arming and preparing there to commit hostilities. I cannot violate your territory. If I went into one of your harbors to do that you would object to it, and would prevent it, and, in an international point of view, I could not claim a right to do it.' But then the belligerent would say: You on your part must take care that what passes out of your territory shall pass out in such a state as that I shall have a fair chance of capturing or dealing (if I am entitled to capture or to deal with it) with that which comes outside your territory without its having occupied itself within your territory by preparing itself for aggression upon me, so that when it comes out of your territory it shall not come out as a ship which I have to cope with as a ship of war, but as an article of property which might, if it could escape my watchful care, find its way into the port or the possession of another belligerent, but as to which I, in my turn, have a right to the chance of capturing it 'and taking it before it could commence hostilities against me.' That would be a very natural course for a belligerent to take, and very natural language for a belligerent to hold, and it is language, the sense and wisdom of which it is impossible to dispute. Therefore, my lords, I should say, *a priori*, that what we should expect to be the course of municipal legislation upon the subject would be some legislation which would guard against that evil which I have endeavored to point out, and which, by way of restraint upon the subjects of the neutral power, would prevent its subjects doing that of which, in the language that I have endeavored to convey, the belligerent might complain."

Now, my lords, that is extremely ingenious, but absolutely without foundation on the principles of international law. I have no doubt it is perfectly true the belligerent would practically complain whenever he was suffering danger or damage from operations of that kind against which the foreign enlistment act is directed if they were carried on under the observation of the government openly in a neutral country. But as to those fine distinctions about the boundary line, and about its not being permissible by international law to carry a ship up to the boundary line from the neutral territory in such a state that the moment she crosses it she may be in a condition to commit hostilities; as to the chance of capturing it or dealing with it; and the right which the other belligerent has to require that the neutral should send the ship over the line in such a state that she may be captured or dealt with without being able to defend herself; it is purely an imagination of my learned friend's mind. I understand why his imagination took that direction, because he wanted to invent a rule of international law to square with his theory of the act, and at the same time to take off the edge of some practical arguments against his general conclusion. But I have a very short answer to that, and that is, that it is as plainly justifiable (putting municipal law aside) by international law to deliver a contraband article, or a congeries of contraband articles, in the neutral territory itself, within the neutral waters, as it is on any part of the line outside. And not only do I say that as a general proposition, but I am able to illustrate it with regard to this particular matter of an armed ship. My lords, the American authorities that your lordships will hear of, if you have not heard of them already, and other authorities, too, all say that, municipal legislation apart, a ship completely armed and equipped may be sold within the neutral territory, and that the belligerent has no right by any settled rule or principle of international law to complain of it. For the purpose of this distinction of my learned friend, what difference in the world is there between a ship constructed here and a ship sold here? Why, suppose a ship ready-made, made merely as a mercantile speculation by the builder, that, I believe, is a case not touched in any way by the foreign enlistment act; whether it be or not is not the present question. But putting the foreign enlistment act and municipal legislation out of the question, if this rule of international law which my learned friend Sir Hugh Cairns invented for the purpose of his argument in order to make the two things fit together existed, it is perfectly plain that no ship ready armed and equipped could be delivered within the neutral waters so that she might pass out ready for action if she met the enemy on the sea without giving a right of reclamation to the foreign government. Is that the doctrine of American writers? I will refer your lordships to a short passage in Wheaton's History of the Law of Nations, New York, first edition, page 312, in which he treats the proposition as one only to be

* See page 188.

spoken of with contempt. He is there speaking of a controversy between two Italian jurists, Lampredi and Galiani. One of them, Lampredi, he regards as a person of some reputation and learning, while Galiani, the other, is a person whom he thinks very lightly of indeed. I believe we find this very point touched there: "Lampredi then proceeds to consider an idle question raised by Galiani, 'whether the conventional law of nations interdicting the trade with the enemy in articles contraband of war extends to the sale of the same articles within the neutral territory? Galiani pretends that it does; and that a ship, for example, built and armed for war in a neutral port cannot be there lawfully sold to a belligerent. Lampredi takes a great deal of superfluous pains to fortify, both by reason and an appeal to the authority of treaties and of preceding public jurists, his own opinion that the transportation to the enemy of contraband articles alone is prohibited; but that the sale of such articles within the territory of the neutral country is perfectly lawful; he admits that there may be instances where neutral nations, from a prudent desire of avoiding any collision with powerful belligerents, may have prohibited the trade in contraband of war within the territory; but he asserts that Venice was the only example, during the war of the American Revolution, of a neutral state absolutely prohibiting such a traffic. Naples only prohibiting the building, for sale, of vessels of war, and the exportation of other contraband articles; while Tuscany permitted her subjects to continue their accustomed trade in such articles both within the territory and for exportation, subject, in the latter case, to the belligerent right of seizing contraband goods going for the enemy's use."

Now, my lords, nobody can read that passage without seeing very plainly what Wheaton's view of this distinction would be. It is quite plain that it can make no difference whatever for the purpose of the distinction whether a ship ready made is sold or whether she is manufactured and delivered under an order. So far as that goes, and before we come to the foreign enlistment act and its construction, I entirely subscribe to something which fell from the learned lord chief baron at the trial, that it could make no difference whether there was a sale of a thing ready made without a previous contract or a delivery under a contract. No doubt if no legislation made a difference there would be none. And most assuredly, as far as the right of foreign belligerent countries to complain is concerned, it is perfectly plain that if they cannot complain of a ship ready armed and equipped being sold and delivered in a neutral port, and crossing the frontier water ready immediately to engage with any ship she may meet, of course I do not mean going in pursuit, because that falls under another consideration; if, I say, foreign belligerent countries could not complain of that, neither could they complain because the ship is constructed under circumstances like those which we have been considering, and crosses in a condition to resist any attempt to make a capture of her. But the truth is that there is no connection whatever between my learned friend's premises on this part of the case and his conclusion. His two rules of international law, properly understood, are quite sound as far as they go, but they do not conduct you to the conclusion that there is an obligation antecedently to municipal legislation upon any neutral country to prohibit that part of the trade of its subjects which, whatever construction you may put upon this act, is prohibited by the foreign enlistment act.

And I venture to say that it will be a deep and most serious misfortune to this country, and to all other countries in a similar position, if such a doctrine should at any time receive the sanction of your lordships' authority, because, what would of course be the immediate consequence? Why, that whenever ships prepared for war have actually crossed the frontier and have not been stopped under such circumstances, some color would be given to those demands which have hitherto been treated as extravagant, unreasonable, and utterly without foundation in the doctrines of international law, for compensation and reparation for all the damage which ships so crossing the frontier line might commit.

I pass, my lords, from that, and before I present my own view of the mischief of the statute, and consider what is the true connection, as far as there is any, between questions of international law and that statute, I think it will be convenient that I should shortly refer to his lordship's ruling upon the corresponding point, because this argument of my learned friend Sir Hugh Cairns appears to me certainly to have that support, which I am very far indeed from undervaluing, which any argument may have that coincides, to a certain extent, with passages in a judgment or charge of a learned judge. It is one of the things, my lords, of which we respectfully complain in this summing up and ruling of the lord chief baron; that his lordship has made arbitrary assumptions as to the connection between the general permission of contraband trade by international law and the construction of this statute with respect to ships. And I will ask your lordships to permit me to refer you to the passages of that charge which contain those assumptions. There is one, my lords, at page 229,* which I will not dwell upon. It merely states the general rule as to the right of trade in contraband, adopting, I think from Chancellor Kent, that passage to the effect not only that no nation is

* See page 137.

bound to prohibit commercial adventures in contraband of war, but I think also the one in which he uses the expression open to criticism, that the right of a neutral to transport, and of a hostile power to seize, are conflicting rights. His lordship refers to those authorities, upon which I make at present no observation. But then, at page 231,* he takes up the same subject again, and after noticing that the word "building" did not occur in the act of Parliament, which is of course a very important observation, and one which will require careful attention when we come to that part of the subject, his lordship proceeds thus: "Surely, if from Birmingham either state may get any quantity of destructive instruments of war, and if from the various parts of the kingdom where gunpowder is made they can obtain any quantity of that destructive material, why should they not get ships? Why should ships alone be themselves contraband?" My lords, we all entirely agree that ships are not alone contraband. The expression "contraband," properly speaking, relates to that which by international law may be taken upon the seas. All those things are contraband there; and it appears to me that, as far as international law is concerned, there is no distinction whatever between ships and those other things. But if the learned lord chief baron meant to use the word "contraband" when he said "why should they not get ships?" "Why should ships alone be of themselves contraband?" in the sense of "prohibited by the statute," (I suppose that was the sense in which the word was used,) then I would take leave to say, that is a matter of legislation; and that, as far as we find that ships are so, we are not to endeavor to get out of it, and to pare down and fritter away the statute by arbitrary and false constructions, because it may seem (though I think very good reasons can be given for the distinction) that one kind of contraband should be put upon the same footing as another.

How does his lordship proceed? "Now, gentlemen, I will state to you why I put the question I did to the attorney general. I said, do you mean to say that a man cannot make a vessel, intending to sell it to either of the belligerent powers that require to have it, to that one which will give him the largest price for it? Is that unlawful? The learned attorney general, I own, rather to my surprise, declined giving an answer to a question which I thought very plain and very clear. You" (that is the jury) "saw what passed. I must leave you to judge whether there was anything improper in the manner in which I (so to express it) communed with the attorney general on the law, so that we might really understand each other, and that I might have my mind instructed, fitted out, equipped, and furnished, if you please, by the contents of his. Gentlemen, the learned attorney general declined to answer that question. But I think, by this time, having read to you these matters," (that is, the passages from the American books concerning the general rules as to contraband trade,) "you are lawyers enough to answer it yourselves. I think that answer ought to be, 'Yes, a man may make a vessel.' Nay, more, according to the authority I have just read" (that was, I think, the case of the *Independencia*) "he may make a vessel and arm it, and then offer it for sale." Well, my lords, I believe that to be perfectly true, provided always that it was not done with any intention antecedently to the offering for sale such as the statute strikes at. At all events, it is true by general international law. Then his lordship says: "So Story lays down. But I meant, gentlemen, as I said then, if I had got an affirmative answer to that question, to put another. If any man may build a vessel for the purpose of offering it to either of the belligerent powers who is minded to have it, may he not execute an order for it?" That would apparently refer to a vessel not only built but armed. His lordship goes on to say: "Because it seems to me to follow, as a matter of course, if I may make a vessel, and then say to the United States: 'I have got a capital vessel, it can easily be turned into a ship of war; of course I have not made it a ship of war at present; will you buy it?' if that is perfectly lawful."

MR. BARON CHANNELL. "If that is lawful?"

MR. ATTORNEY GENERAL. "Surely it is lawful for the United States to say: 'Make us a vessel of such and such description, and when you have made it send it to us.'" Now, my lords, I take the liberty of saying that the *sequitur* is not obvious to my mind; it may be a true interpretation.

LORD CHIEF BARON. I must rather object to a critical observation of anything that is not a direction to the jury, that you have a right to complain of. This is really the first time that I have ever heard a learned judge's direction to the jury used in this way after being taken down in no doubt tolerably accurate short-hand, but it contains some rather considerable mistakes and corrections. Although certainly it is generally praiseworthy, yet there are many parts of it which are open to serious objections. Therefore, except in the matter of direction to the jury, if you think it useful to comment upon it, I have no objection; but it is not usual in this court to make a short-hand writer's note the subject of that species of commentary.

MR. ATTORNEY GENERAL. I regret it, my lord, if my duty should require me to do anything unusual, but I am perfectly convinced that the jury would naturally receive, however unintentional on your lordship's part, impressions from many of those passages to which I wish to call attention.

* See page 128.

LORD CHIEF BARON. If you think it necessary, you can, of course, do so.

MR. ATTORNEY GENERAL. My lord, I think it absolutely necessary.

LORD CHIEF BARON. Then I should be very sorry to stop you, because I believe it is entirely owing to myself, as presiding in this court, that that we are now doing is permitted to be done; that is, to take a regular short-hand writer's note for this purpose. In the times of those who preceded me, and as long as Lord Wenllysdales was a member of this court, such a thing was not permitted. I think there is considerable convenience in the modern practice, which I believe we have adopted from what I consider to be the better practice of the court of equity, namely, that of resorting to a short-hand writer's notes for the very words that were used. But most unquestionably this line of argument would not have been permitted if my brother Parke, now Lord Wenllysdales, had been sitting in the court. There are many reasons why I may be considered in some measure as having introduced the practice, and certainly I do not mean to complain of it, if you think it necessary to the justice of the case to resort to it now.

MR. ATTORNEY GENERAL. Certainly, with all respect to your lordship, I do.

LORD CHIEF BARON. Then I have no more to say.

MR. ATTORNEY GENERAL. My learned friends on the other side have referred to the short-hand notes, and to parts of your lordship's summing up, as well as the rest. No doubt we shall know eventually, and of course we shall take it with entire deference, what your lordship really meant by any passages that may have been misunderstood in any quarter; but the jury by those passages would have been led to receive impressions, and to suppose themselves to have been instructed in a certain sense of the statute.

LORD CHIEF BARON. Pray understand me as saying distinctly, that as the practice was introduced by myself, I certainly mean to throw no impediment in the way of the fullest use that can be made of it for the advancement of justice.

MR. ATTORNEY GENERAL. My lords, I wish to state this. (I am sure your lordship would not suppose the contrary for a moment.) I have not the slightest wish to decline to receive from your lordship any correction as to any error which there may be in the report. On the contrary, I should be exceedingly obliged if you would tell me if there be any expressions in the report, upon which I speak, which appear to your lordships to be inaccurately stated there, through those defects which we all know may creep into all short-hand notes. I am sure I should be sorry to make an observation upon anything of that kind; but my impression is, that in substance the passage I am about to read was what I heard from your lordship myself, and what was actually said, namely, that it follows that because a party may sell a vessel which it was said may be sold, even armed, according to the authority of Story, so he may even execute an order given by one of the belligerent parties for a similar vessel. And then follows this passage: "Now the learned counsel certainly addressed themselves very much to this view of the matter; but it was said, 'But if you allow this you repeal the statute.' Gentlemen, I think nothing of the kind. What that statute meant to provide for was, I own, I think, by no means the protection of the belligerent powers." There, my lords, with perfect respect, I take the liberty of saying that I most fully agree. I think that upon the face of the statute it was perfectly plain that it was the peace and welfare of this realm that the statute was meant to provide for, and no person can take exception to that. "I do not think their protection entered into the heads of those who framed this statute, otherwise they would have said, 'You shall not sell gunpowder, you shall not sell guns.'"

LORD CHIEF BARON. We have, in the next sentence, "very heartily," but "heavily" is, no doubt, the correct meaning.

MR. ATTORNEY GENERAL. I am reading from the small book, because I have marked it. "There are places that now and then explode in different parts of the kingdom, and which would have complained very heavily if they had said, 'You shall not sell gunpowder, you shall not sell arms.' Why all Birmingham would have been in arms. But the object of this statute was this." I have no doubt what follows was merely by way of illustration. At the same time, it is an illustration which seems to me to have had the unfortunate effect of representing, as if it were a complete view of the object of the statute, that which, to say the least, would be a view only of some incidental inconvenience which the statute might help to meet. His lordship says, "The object of the statute was this: we will not have our ports in this country subject to possibly hostile movements; you shall not be fitting up at one dock a vessel equipped and ready, not being completely armed, but ready to go to sea, and at another dock close by be fitting up another vessel, and equipping it in the same way, which might come into hostile communication immediately, possibly before they left the port. It would be very wrong if they did so, but it is a possibility. Now and then it has happened, and has been the occasion of this statute."

LORD CHIEF BARON. There is an error there, because it is quite plain from the summing up that that was not the occasion of the statute; it was one of the occasions which might give rise to it.

MR. ATTORNEY GENERAL. I have no doubt whatever, my lord, that that was your

lordship's intention, but nobody could read the passage, as I have already said, without being satisfied that although your lordship would not desire to be understood as laying down in those terms your view of the whole scope and object of the statute, nevertheless, unfortunately it was so expressed to the jury, or expressed in a manner amounting to that, and it would certainly, I think, produce the impression, even upon the minds of those who would not misunderstand your lordship to a great extent, that your lordship thought the only object of the statute was to prevent within British waters those acts which may be called direct, or, as my learned friend calls them, proximate acts of hostility; that such acts as are in truth hostile collisions, or movements leading to hostile collisions shortly and at a slight distance from our territories, so that you may say the attack began within our waters. But, my lord, I take the liberty of observing that the whole tendency of the passage which I have read is a misleading tendency, suggesting this, that there is no reason in the world why ships should be in a different position from other contraband; and in point of fact his lordship must have been understood to say, I do not think they are; I think the statute was only meant to prevent hostile operations of ships, or that which might lead to hostile operations of ships within our waters, and to prevent that species of breach of the peace—to prevent that which would be a breach of the peace, or a violation of our territory by hostile operations; and it had not any such large intent and object as would justify a distinction being made by legislative enactment between the position of ships generally and the position of other contraband.

My lord, I venture to think that this was an erroneous and a misleading view with respect to the object of the statute, and I will now take the liberty of presenting my view of the object of the statute, derived mainly from the language of the preamble and from the provisions of the statute itself. Now I take first the preamble, and I find that the preamble expresses the mischief which was to be prevented thus. It speaks both of the "enlistment or engagement of his Majesty's subjects to serve in war," and of the equipping and fitting out and arming of vessels "for warlike operations in or against the dominions or territories of any foreign prince," or "against the ships, goods, or merchandise of any foreign prince," or his subjects, as prejudicial to" and tending "to endanger the peace and welfare of this kingdom." And I find that the statute follows out that preamble, in the second clause, by prohibiting the enlistment in any part of the world in the service of any foreign prince, without his Majesty's license, or on board any ship "intended to be used for any warlike purpose," (I take one expression, which is sufficient for me,) "of any natural-born subject of the Crown." The latter part of the same section also prohibits the hiring or procuring by any person whatever, whether natural-born subject or not, within the realm, of any other person, whether a natural-born subject or not, to act as an officer, soldier, or sailor in the land or sea service of any foreign prince, or agree to go to or embark from any part of the dominions of the Crown of England in order to be so employed elsewhere.

So that when we take the subject of enlistment, we find it is perfectly plain upon the face of the statute that there are no proximate acts of war, whether within our own territory or which could tend to the violation of our territory, which are alone aimed at; but, on the contrary, the net is thrown as wide as the entire world, and the statute deals with enlistments by natural-born British subjects anywhere, and it deals also with the procuring in the realm of any persons whatever not only to enlist, but to agree to go or embark from any part of his Majesty's dominions with the purpose to engage themselves or enlist elsewhere.

Then, my lord, the same act contains the clauses we have to consider upon the subject of the equipment of vessels. I say, that upon the face of the preamble and clauses taken together, a mischief, as large as words could describe, is pointed at as not sufficiently prevented by existing laws, namely, a danger to the peace and welfare of this kingdom; and the clauses which follow prove that that is a danger which it is supposed may arise from acts of the subjects of the Crown not only within British territory, but beyond British territory, as to one at least of the two matters with which the act deals. It is, therefore, quite impossible to circumscribe within any such narrow limits as has been imagined the general object and the general policy of the act.

Now let me state to your lordships what I think is the just conclusion to be drawn from the act itself, with all such reference to extrinsic facts of history as may be admissible as to its object. I understand the fact to be this, that the act was considered necessary in order to enable the sovereign of this country to take the measures which were or might be useful to preserve the peace of the kingdom and to avoid entanglements with foreign powers. It was not because foreign powers had by established international law a right to demand it; but because we knew, in the affairs of men, that the demands of foreign powers, and the differences which might arise with them, were not limited by abstract *a priori* notions of absolute right. It was to avoid entanglements and difficulties of that sort that the Crown asserted its unquestionable right to compel, in those matters which this statute defines, under penalties, the observance by its own subjects and by foreigners within the realm, of that neutrality which the sovereign himself desired to observe.

And, my lords, it is very plain what sort of evils would arise if these prohibited things were allowed to go on. Is it not in itself manifest that enlistments of men and equipments of ships within the realm might tend to foment those wars as to which the sovereign was neutral? And that they might tend by fomenting those wars to introduce complications and difficulties which otherwise might not arise?

In truth, my lords, experience has shown with regard to both these subject-matters, the enlistments of men and arms, and the equipments of vessels, that these things are liable to happen when there are large bodies of people within the state not so neutrally disposed as the sovereign, when feeling, opinion, or whatever else may be the cause, leads to strong sympathies within the realm on the part of numbers of the subjects with some foreign belligerent power. No better illustration can be desired than that which is furnished by the circumstances under which our act passed. Your lordships all recollect the strong sympathy which was felt within the realm with the revolted Spanish colonies. The idea of any succor going from the realm by enlistments of men, or equipments of vessels, to Spain against the revolted colonies, was one from which the public feeling was entirely abhorrent. And therefore it is obvious that this kind of thing is likely to happen if there is no restraint: while the sovereign professes neutrality the people may be acting unneutrally, or large bodies of people may be acting in such a manner as to expose the country at large, in respect of which the sovereign represents all the people, to a suspicion of willfully conniving at and participating in systematic, unneutral conduct on the part of the subjects, in spite of the neutrality which the state itself professes.

And this is likely to happen with regard to this class of actions in a manner not like the case of ordinary contraband, as I will show you; and it is pointed at on the face of the statute. If there be a war, in which, though the sovereign of Great Britain professes neutrality, yet a great number of the subjects act in a manner directly contrary to it and supply a force by enlistments of men, (I take that as an example,) by organizing expeditions of men to go and serve in the armies of the belligerent whom they favor, or, which is practically just as noxious, by organizing naval equipments, it is perfectly plain that the result will be this: a state of things will be produced which alters the balance of power practically, and in consequence of that partiality of those subjects of the neutral state as between the two belligerents, something is done which throws a power from the neutral country into the scale of one of the belligerents against the other, and which makes the belligerent who suffers by it say, I care not what your Vattel, or Grotius, or Puffendorf may say; I find that I am practically suffering from this, and you call yourself neutral, but your subjects are sending navies and are sending armies to take part against me in the war, and it alters practically the conditions of the warfare. So that it is better worth my while to go to war with you too, and to have it out openly, than allow this state of things to go on.

Can any one doubt that that is the way in which such a state of things would work practically as between a powerful country and a weak one? Let me imagine that we were at war with France, and all the private dock-yards in Sweden and in the United States, and in the Netherlands, or wherever else they may build ships, were at work day and night to fit out and equip vessels of war for France, then it would be a question of policy, as between us and a great power like the United States, whether the evil had become so intolerable that it would be better to complicate ourselves with an additional war with so powerful a country rather than to endure it. But it might, I think, be quite conceivable and possible that we in that case, as we, I think, have done in all similar cases in the course of our history, might say: We will not endure it, and if this goes on, we will rather go to war with you than let war be carried on practically against us from your shores under pretense of neutrality. That we should do that with a weak power like Sweden, can any human being entertain a doubt? These are the dangers that have to be provided against. A belligerent state, under those circumstances, does not stop to examine whether this is a dealing in contraband, whether it comes within the general rules applicable to munitions of war—to shot and muskets and other things, which are the subjects of mere mercantile dealings. It looks broadly at the practical mischief which it is suffering. It says, It is in substance as noxious to me as if it were war carried on from your shores, and I will not endure it.

The legislature saw that danger, and the legislature thought it necessary to guard against it. And if your lordships will observe, the language is, "may be prejudicial to and tend to endanger the peace and welfare of this kingdom." My lords, the peace and welfare of this kingdom would be endangered even if such difficulties stopped short of war, even if it were merely a disturbance of friendly relations with other countries, even if there were the seeds of future wars only sown and animosities engendered. It is perfectly manifest, therefore, that as such occasions might tend to produce such results, the legislature might most wisely take out of the general category, in which it suffered other contraband dealings to remain, particular kinds of contraband dealings and proceedings not previously forbidden by any kind of international law whatever on which anybody could lay his finger, but which, nevertheless, when they proceed to a certain point, might become so intolerable

to the nations that suffered from them, that they might be supposed to be likely to result in danger to this kingdom. Let me put the sort of case which might arise, and your lordships will see at once that I am not stating an imaginary case. Let me put the case of a naval power so strong as to blockade all the ports of the enemy, so that not a single ship of war can come out of those ports. Is it not a practical cause of complaint, that in the territory of some neutral power, secure in her immunity as a neutral, where no attack could be made, arsenals should be established, from which ships might be sent out ready or all but ready, and, whatever may be the quibbling distinctions which legal arguments may introduce, which will be ready and can be made ready very soon by the most easy means and the most practicable methods, to take the sea, clear of the blockade, and by possibility (we cannot say how far this might go) multiplying in such numbers that the entire advantage of the naval superiority possessed in the first instance by the blockading power might be entirely destroyed by means of the partialities of the subjects of the neutral state, and an asylum afforded in the neutral state for operations substantially belligerent carried on there under the eye of the belligerent power, but in the neutral territory?

Now, my lords, I approach the matter a little more closely, and I must, in the first place, demur to the very strong things which some people say about ordinary contraband trade. I do not propose to take your lordships into that discussion, which you will find most learnedly conducted, I think, by Mr. Duer in his book upon Marine Insurance, as to whether or no such language as that which has been read from Chancellor Kent is entirely unexceptionable, in which he speaks of two conflicting rights, the right of the neutral to carry contraband of war, and the right of the belligerent to intercept and capture it. Now, I apprehend that, for the purpose for which Chancellor Kent has used the language, it was entirely accurate. He merely meant this: the law of nations does not impose upon any neutral government the obligation of preventing its merchants from carrying contraband. The law of nations at the same time justifies the belligerent as against the neutral in treating it as hostile when they catch it. There is no sanction beyond that which the law of nations imposes; and if there be any obligation in the matter elsewhere than within the sphere of the dominion of the law of nations, where a belligerent power can exercise acts of force, it is an imperfect obligation. Mr. Duer and many others think that it is not a happily chosen phraseology to express such a state of things by the words "conflicting rights," or by language such as I think I have heard to-day in court from one of your lordships, "perfectly lawful."

LORD CHIEF BARON. At what page is that passage in Duer to which you have referred?

MR. ATTORNEY GENERAL. I have not got the book in court, but there is a whole chapter upon the subject of marine insurance of contraband.

MR. SOLICITOR GENERAL. It is in the first volume of Duer, my lord, at page 750.

MR. ATTORNEY GENERAL. A similar expression to that has, I think, fallen from the bench here; and I also say as to that, with sincere respect, that I believe it to have been used in the same sense; yet I cannot but think that if it were critically examined some exception might be taken to it. I mean the expression "perfectly lawful." I do not think myself that those things which are contrary even to an imperfect obligation can be regarded as being in strictness "perfectly lawful." A neutral power would surely not submit to the capture of the vessels of its subjects on the high seas, and the rule of international law authorizing that capture would never have been established if it were held that the carriage of contraband to the ports of a belligerent is by international law perfectly lawful. It is lawful in this sense, that there is no sanction to enforce the law which prohibits it, except that of the right of the belligerent power to seize. But I apprehend that in a country where neutrality is professed, and where the sovereign imposes upon her subjects the duty of neutrality, it is not to be regarded as a thing entirely according to good morals, as a thing unexceptionable and absolutely right in itself. And that is a consideration not to be forgotten when we enter into these general considerations as to the supposed favor to contraband trade which the legislature must be imagined to have had in passing this statute, and with respect to the supposed desire not to restrict that trade. I say that I do not think a contraband trade of that kind is regarded as so absolutely righteous and lawful even by municipal law, much less by the law of nations.

As to this part of the case perhaps your lordships will allow me to mention to you a passage in Bynkershoek, chapter ix, "*De statu belli inter non hostes*," which I do the rather because the passage was referred to in a document which I believe was not generally considered in Europe to state the doctrines of international law incorrectly. I mean the answer sent by the British government to Mr. Seward in the case of the "Trent." The passage which I refer to was mentioned in that answer as containing perhaps as good an exposition as could be found anywhere of the principle of the law of contraband. I do not know whether your lordships will follow me conveniently if I read it in the Latin; if not, perhaps it will be convenient that I should translate it into English.

LORD CHIEF BARON. We will try.

MR. ATTORNEY GENERAL. "*Quidni igitur amaci nostri ad amicos suos, quamvis nostros hostes, ea adferunt quæ ante adtulissent; arma, viros, reliqua?*" Then he goes on to say that the states general answered that question in the affirmative, and contended for the right even to send auxiliary troops to both belligerents. He continues thus—he differs from that: "*Horum (that is, of neutrals) officium est, omni modo cavere, ne se bello interponant, et his quam illis partibus sint vel æquiores vel iniquiores. Et sane id quod modo dicebam non tantum ratio docet, sed et usus inter omnes fere gentes receptus. Quamvis enim libera sint ut amicorum hostibus commercia, non tamen placuit (ut capite proximo latius ostendam) ne alterutrum, his rebus juvemus, quibus bellum contra amicos nostros instruitur et foveatur. Non licet igitur alterutri advehere ea, quibus in bello gerendo opus habet; ut sunt tormenta, arma, et, quorum præcipuus in bello usus, milites. Optimo jure interdictum est, ne quid eorum hostibus subministremus; quia his rebus nos ipsi quodammodo videremur amicis nostris bellum facere.*"

Your lordships observe that those words cover the whole ground of contraband of war, cannon, arms, and soldiers, the most useful of all things in war. Ships are not mentioned; of course they would come under the same principle; and the prohibition of such trade by international law is stated to be upon the ground that those who engage in it appear themselves in a manner to take part in the war, and to make war upon a nation with whom their state is at peace. That is the ground of the right of capture; and no doubt it is equally true that the right of capture is the only general sanction that is to be found, and that municipal law does not, generally speaking, interfere with the carriage of contraband; and still more, that it is settled among nations, that no belligerent has a right to require any other nation to pass municipal laws to interfere with it. But it is equally clear that the right of capture rests upon the intrinsic illegality of the thing by the law of nations; and that the principle of that illegality is that it is a participation in the war *quodammodo*. And among the things that are mentioned by Bynkershoek, and which are all put by him under one category, you will find that *milites* are one. The foreign enlistment act takes *milites* out of that category, and says that the enlistment of soldiers is a thing which shall not be done. It says they are a particularly noxious species of contraband, as to which the peace and welfare of the realm may be endangered, if they are left simply upon the general power of a belligerent to deal with them himself; and therefore, our law steps in and deals with them. Then why should it not also deal with ships upon a similar principle? I think I am at liberty to say that.

But, my lords, if I do not misunderstand them, the authorities to be found in the decisions of the common law courts of this country have also recognized that principle, and have treated the contraband trade, which upon the high seas would be illegal according to the law of nations, not as a perfectly righteous and absolutely lawful and in every sense innocent trade, but as a trade *contra bonos mores*, which, although there be no positive law of the land to make it penal, nevertheless is a trade which the law will so far discourage and disapprove as to give it no aid or assistance. Upon that subject I will mention to your lordships two classes of cases, one which has been mentioned already, the case of *De Wurtz vs. Hendricks*, tried before Chief Justice Best, where persons, who in this country had subscribed to a loan to promote some foreign insurrection or rebellion, were held to have entered into a contract upon which they could not recover; it being perfectly clear that it is just as lawful to raise money and lend money as it is to sell ammunition of war, and to sell ships. And then the other authorities are three—one in the 9th Barnewell and Cresswell, page 712, "*Harratt vs. Wise*," the second "*Naylor vs. Taylor*," in the same book, at page 718, and the third in 8th Bingham, "*Madeiros vs. Hill*," at page 231—in all of which it was rather taken for granted, I am bound to say, than decided, because the verdicts upon the facts in each case were in favor of the plaintiff, that if it were proved that there was a ship sent out under insurance for the purpose of running a blockade, going into a blockaded port, there was a legal prohibition against it by the law of nations, and that the assured could not recover. I do not think it was decided in those cases; but I cannot help thinking that enough fell from judges of great eminence to make it clear, at all events, that they entertained great doubt whether it was possible to recover upon such a contract. I will not go into that, because ultimately it would appear to turn upon the nice question which has been much debated among jurists, as to how far a mere ordinary trade in contraband, not prohibited in law, is to be regarded as *contra bonos mores*, or as an ordinary branch of commerce. One thing I will say upon that subject, which is that when her Majesty has issued that proclamation which your lordships have printed in the book before you—

LORD CHIEF BARON. The case which you referred to in the 8th Bingham says: "It is no defense to an action on a charter-party for not sailing on the voyage toward a port agreed on, that the port was in a state of blockade, if the defendant knew the fact at the time of entering into the charter-party." If that be a correct analysis of the case, (which sometimes these marginal notes are not,) I do not see that it quite amounts to that.

MR. ATTORNEY GENERAL. I do not think your lordship will find that it is a very accurate note.

LORD CHIEF BARON. Sometimes it is not. The report of the judgment of Lord Chief Justice Tindal is this: "The case of the *Neptunus*, which was cited in support of the first objection, establishes that it is illegal to attempt to enter a blockaded port in violation of the blockade, and that after notification of the blockade the act of sailing to a blockaded port with the intention of violating the blockade is in itself illegal. But neither that case, nor any other that can be cited, has laid it down that the mere act of sailing to a port which is blockaded at the time"—

MR. ATTORNEY GENERAL. That is the point, my lord.

LORD CHIEF BARON. "Which is blockaded at the time the voyage is commenced is any offense against the law of nations, where there is no premeditated intention of breaking the blockade, if it shall be found to continue in force when the ship arrives off the port."

MR. ATTORNEY GENERAL. Exactly, my lord; that is what I understood to be the view of the court, and I believe that you will find the other cases, as far as they go, consistent with it; but your lordships will, I hope, understand that I do not want to press this matter, which is very much beside the ultimate question, though it is connected with the introductory argument with which I am now dealing. I do not want to press it, nor am I wishing to obtain from your lordships any expression of opinion on the point. I am only thinking that it ought to be borne in mind, that if any one approaches the construction of the act with the idea that trade in contraband generally is a thing to be encouraged, and which the law looks at with approbation, that is certainly not a principle for which, as far as I can find, there is any authority in our law, and I do not think it is a principle easily to be reconciled with the recognition of international law, and the acquiescence of the neutral power in the capture of the ships of its subjects on such grounds. But, my lords, I was going to add to that a reference, which I think ought not to be omitted, to her Majesty's proclamation. Your lordships will recollect that her Majesty, in her proclamation, of which you have an abstract in the book before you, at pages 12 and 13 of the Appendix, ends by warning her subjects in these terms: After stating her intention to be strictly neutral, and referring to the foreign enlistment act, she warns her subjects: "That if any one of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign, in the said contest, or in violation or contravention of the law of nations in that behalf; as for example, and more especially;" then enlistment is mentioned; "or by serving as officers, sailors, or marines on board any ship or vessel of war or transport, or of in the service of either of the said contending parties, or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas, with intent to enlist or engage in any such service, or by procuring or attempting to procure within her Majesty's dominions, at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war, or privateer, or transport, by either of the said contending parties; or by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, dispatches, arms, military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties; all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced." No doubt, as to the law of nations, that applies to the contraband and blockade. As to the statute, that applies to the enlistment and to the equipment; but her Majesty, declaring her neutrality, and warning all her subjects under those penalties to abstain from those unneutral acts, it would be a very strong proposition to say that the legislature of a country, when legislating on a subject connected with this matter, can be supposed to have regarded with any *a priori* favor the idea of contraband trade, or to have had any scruple whatever in cutting that down and restraining it by penalties in any matter as to which any such course was considered or might be deemed expedient with regard to the peace and welfare of the kingdom. I wish your lordships to allow me to bring under your notice a matter that ought not—I do not know what its ultimate bearing in your lordships' minds may be—but it ought not to be forgotten in the consideration of this question, that when people bring forward arguments as to its being right to leave the trade in ships as free as the trade in gunpowder and other things of that description, that it is a remarkable fact that this is the present state of the law independently of the foreign enlistment act, namely, that her Majesty has the power whenever she pleases to prohibit every other species of contraband trade.

LORD CHIEF BARON. No doubt.

MR. ATTORNEY GENERAL. Yes; but she has no power by the statute that gives her that authority so to deal with a ship, so that ships are left to be dealt with solely under the foreign enlistment act.

LORD CHIEF BARON. What is the statute?

MR. ATTORNEY GENERAL. The present statute on the subject is the 16th and 17th Victoria, chapter 107, and section 150. It is the customs consolidation act. This is the clause. It is the result of the consolidation, and in part extension, of two earlier statutes, which I will mention to your lordships afterward: "The following goods may, by proclamation or order in council, be prohibited either to be exported or carried coastwise: Arms, ammunition, and gunpowder, military and naval stores, and any articles which her Majesty shall judge capable of being converted into, or made useful in increasing the quantity of, military or naval stores, provisions, or any sort of victual which may be used as food by man; and if any goods so prohibited shall be exported from the United Kingdom, or carried coastwise, or be waterborne to be so exported or carried, they shall be forfeited." That, I may mention, is the consolidation and amendment of some earlier statutes, to which I will give your lordships the references without reading them.

LORD CHIEF BARON. I suppose they are in the margin of that act of Parliament.

MR. ATTORNEY GENERAL. Are they, my lord? They are not in the margin of the copy I have.

LORD CHIEF BARON. You may find it in the quarto edition.

MR. ATTORNEY GENERAL. I dare say you are right, my lord. So that your lordships see, if at any time it should appear to her Majesty that considerations connected with the peace and welfare of the kingdom may make it expedient to prohibit the export trade in gunpowder, arms, or any other species of munitions of war, her Majesty has the power of doing it by order in council, which gives her over that branch of the subject a complete and absolute control; but the statutes which give her that control do not extend to ships, and if ships are not dealt with by the foreign enlistment act, so far as they are not dealt with by it they are not dealt with at all. Accordingly, your lordships were reminded by one of my learned friends of the opinion of the judges in Fortescue's Reports, given, I believe, in the year 1721, that her Majesty had no power to interfere with any amount of supply of ships to the Czar, who was then engaged in war with Sweden. It is a consideration certainly not unimportant that there is, perhaps, very good reason why the legislature, having given her Majesty power amply sufficient as to all other contraband of war, should have dealt specially with ships. But if the statute, as regards ships, is ineffective, this most important and most noxious of all contraband of war is left in an exceptional position, and it is out of the power even of the sovereign to prevent its being dealt with in a manner which might be prejudicial to the peace and welfare of the nation. And I could not help being struck with a remark which Sir Hugh Cairns made, when he was adverting to the frequently repeated expression, which I shall also often repeat again, about our ports being made arsenals for foreign belligerent powers; an expression which, I believe, is accurate as to that which might take place if to their full length all the arguments which your lordships have heard, and especially those from my learned friend Mr. Mellish, could prevail. He says there is no limit to what may take place with regard to cannon, with regard to rifles, with regard to every other species of contraband or munitions of war; that the confederate government may at this moment establish a Woolwich of their own—an arsenal—for the manufacture of all these things here. I take the liberty of saying that if I do not entirely misunderstand the principles of international law as applied between government and government, our government would have a right to say: You shall make no such use of our territory; we will not permit a foreign government for a moment to establish dock-yards and arsenals and establishments of that kind in this kingdom; and the principle on which Washington acted would be distinctly applicable to such a case; but if there was a doubt as to our government being able to deal with any foreign government on that subject, here we have, in the customs consolidation act, a statutory power entirely sufficient to deal with it; and none of those things could, under any such circumstances, pass out of the kingdom if it were held that the existence of such a state of things tended to endanger, as it most assuredly and necessarily would, the peace and welfare of the kingdom.

And now I wish to advert a little to what my learned friends have said on the subject of ships; at least, I do not know that they have said it, but I think I see some trace of it in what fell from his lordship at the trial, as if ships were not on any intelligible grounds to be distinguished from other contraband of war. Now let me read to your lordships a short passage from one of Lord Stowell's judgments on that subject, in which, I think, we may see the elements and the means of drawing a distinction; at all events, we may see very strong grounds for believing that the legislature never meant to show peculiar favor to that particular kind of contraband, and to leave the trade in it less checked and less liable to be controlled than the trade in any other kind of contraband may be, whenever it becomes dangerous to the peace and welfare of the kingdom. I refer to what was said by Lord Stowell in the case of the "Richmond," reported at page 324 of the 5th volume of Sir Christopher Robinson's Reports. The passage I refer to is at page 331, but it is not unworthy to notice in passing that the ship as to which the question arose was a ship which was in substance, as his lordship

concluded, meant to be sold, after performing a certain voyage, to the enemy. The ship is described at page 325 thus: as a vessel well adapted—she was a merchant vessel at the time—well adapted for a ship of war, and for the service of privateering. I think in another place it was mentioned as “easily convertible.” At the bottom of page 329 Lord Stowell says: “It appears that the vessel was originally built as a ship of war, and was easily convertible to warlike purposes, and it is established in evidence that the master conversed with several persons on this subject, and disclosed an intention of selling her at the Isle of France.” Now, how does his lordship describe that particular kind of contraband? He says, at page 331: “Here was an avowed intention of going to sell a ship to a belligerent, which in time of war is at least a very suspicious act; and to do a great deal more, to sell a ship which the neutral owner knew to be peculiarly adapted for purposes of war, and with a declared expectation that it would be hostilely employed against this country. It cannot surely, under any point of view, but be considered as a very hostile act.” “As a very hostile act,” your lordships observe, “to be carrying a supply of a most powerful instrument of mischief, of contraband ready made up, to the enemy for hostile use, and intended for that use by the seller, and with an avowed knowledge that it would be so applied.” Then he speaks afterward of “the malignant nature” of such a purpose. I agree that he was dealing there with a case which clearly fell under the ordinary scope of international law; but the description which he gives of the nature of that particular kind of contraband I think in itself indicates very intelligible reasons why it should be thought right by a country desirous of preserving its neutrality to deal exceptionally with that species of contraband. There is another passage, in another of his lordship’s judgments, which I will also trouble your lordships by referring to, in connection with that observation about arsenals which my learned friend made. It applies only by analogy; it is the case of the *Fladoven*, which your lordships will find at page 144, in the first volume of Christopher Robinson. The point turned upon this: on the condemnation in a neutral port of a prize; which was treated as null and void, on the ground that a prize court could not, except under very special stipulations previously made between nation and nation, consistently with the law of nations be established in such a place. And the observations I refer to, although the station for a prize court applies only by analogy, are yet observations of which your lordships will immediately see the application to every other similar case, where a station substantially useful for warlike purposes is acquired and obtained by a belligerent power within a neutral country. At page 144, Lord Stowell says this: “Mark the consequences which must follow from such a pretended concession;” (that is, a concession by the neutral power to such a belligerent of the right to hold a prize court within its limits;); “observe in the present case how it would affect the neutral character of the ports in the North. If France can station a judge of the admiralty at *Bergen*, and can station there its cruisers to carry in prizes for that judge to condemn, who can deny that, to every purpose of hostile mischief against the commerce of *England*, *Bergen* will differ from *Dunkirk* in no other respect than this, that it is a port of the enemy to a much greater extent of practical mischief? To make the ports of *Norway* the seats of the *French* tribunals of war, is to make the adjacent sea the theater of French hostilities. It gives one belligerent the unfair advantage of a new station of war, which does not properly belong to him; and it gives to the other the unfair disadvantage of an active enemy in a quarter where no enemy would naturally be found.” Now let us for one moment pause, and consider the nature of this thing. This ship of war, my lords—it really might with propriety be said to be almost more like war itself—a moving, a living, and an active war in itself, than a mere instrument of war. It is not a mere poetical figure, a mere poetical trope, in which it was said of a ship—

“She walks the waters like a thing of life.”

It is practically true, and true more especially of a ship of war, for she carries war where there was no war going on before. Supposing the high seas to be free from privateers and cruisers, and supposing the ports of one belligerent country to be blockaded, then, if things are left without interference to their natural condition, according to the existing balance of power between those belligerents, there is peace on the high seas; that which is spoken of in the preamble of this act. The ships and merchandise of the belligerent power which has the superiority at sea pass backward and forward over the high seas without any hostile acts being exercised against them. But the moment you launch upon the high seas, from a neutral port, ships which are either at that moment, or as soon after as it can be managed, put by means organized from the neutral country also into a condition to commit hostilities, you introduce and superadd, by operations of which the neutral country is the base, a maritime war where there was none before, and which never could have taken place except by those operations so carried on in the neutral country. Well, is there no difference between the case of furnishing ships of war and the case of ordinary contraband which is sent across the sea, which acquires no noxious power at all until it is delivered in the enemy’s country, which, on the high seas, is not war, but mere commerce, and which can only be identi-

fled with war when it has been transported into the hostile country, and has gone through all the risks which it may meet on the road? Let me for a moment apply to the same subject the test one has seen frequently suggested as to whether an adventure is a commercial or a warlike one—that an act of this description is directed against warlike and not against mercantile adventurers. Well, a man who carries contraband across the seas, hoping to run a blockade or to deliver that contraband into the belligerent country, being a neutral, is obviously engaged in merely a commercial adventure. It does not become a matter of warlike operation. It does not become a warlike operation until, as expressed in a speech of Mr. Canning's, "the elements of armament are combined" in the country at which the contraband is intended to arrive. But this ship is quite a different thing. The elements of armament are combined in her, either when she is on the high seas or in the neutral country, as the case may be, and she is herself, when she takes the waters, to a very great extent contraband, ready-made up, as Lord Stowell expressed it. But there is another thing which makes the one adventure commercial. The person who is concerned, the neutral carrier, is trading with his own goods, for his own profit, and, till he delivers them in the market to which they are about being taken, there is no person concerned in that transaction except a person whose purpose can be commercial only. But if the foreign government, by its agents, orders ships of war to be constructed in a neutral country, and turns private dock-yards of neutral merchants in a neutral country into its own dock-yards, it is clear that its adventure is warlike from the first. That government is the principal in the transaction. It causes these ships to be made and equipped, and for it they are built and equipped, and it has no purpose or object whatever in view of a commercial kind. It is purely and simply a warlike operation on the part of that government, namely, to acquire and to launch from that point of departure ships to be used as instruments of war. Now, let me pursue the observations suggested by these distinctions a little further. If this may be done in a single case, of course it may be done on any scale; there is no limit to it. Whole fleets, if there be money or credit to pay for them, may be provided by neutral subjects; and when, as I have said before, it is according to experience probable that the sympathies of the neutral country, or of the people of the neutral country, will preponderate to the one side or the other, or that the wants of one of the belligerents respecting shipping will be different from those of the other, the practical consequence is almost inevitable, that if that kind of thing went on on a large scale, you would have one party served by means of it, and the other party suffering by means of it; and who, that had the power to resent and prevent by force such a state of things, would for a moment endure it? Now I come to a further illustration, and here I am glad to find myself approaching ground which his lordship adverted to by way of illustration in his judgment, which I have already mentioned. My friend, Sir Hugh Cairns, made it part of his proposition that in order to give no just ground of offense to the other belligerent there must be what he described as a chance of capture; that is to say, that the ship constructed and equipped in the neutral port must not pass the boundary line where the territory of a neutral state ceases in a condition immediately to defend herself against capture and to exercise acts of hostility. I have already observed, my lords, and it will be in your recollection, that I find, independently of his argument, no warrant for such a distinction. And I illustrated that by the case of the sale in the neutral country of a ship fully equipped. But put that aside for a moment. That is what my learned friend said. I want to see how that works. He added, or one of your lordships did, that where the territorial right of the neutral ceases, there the belligerent right of the belligerent power begins. Consequently, that in order to exercise this right of capture, the cruisers and the ships of war of the belligerent power who might suffer by the exit of these vessels might be advanced to the neutral line and limit—to the very boundary—there lie in wait and watch, and it was their business to do so; that was the chance they had a right to have—to watch for the coming out of these ships from the neutral ports, and take them as soon as they did so. One of your lordships added, as a further illustration of a thing that might possibly happen on the same hypothesis, that the belligerent cruiser might not even think it necessary to wait outside. It might be in port at the same time, and a company of two or three might go out together, one ship of the federals, or of the confederates, and this ship which was being built for the other of them, and they might fight out their battle the moment they crossed the line. Now, I ask your lordships, whether, if we were to contemplate that state of things, that would not be a state of things which, within the meaning of this statute, according to the narrowest view, would be prejudicial, and would tend to endanger the peace and welfare of this kingdom? I should like to know what we should hear, if there were what would be called a blockade of the port of Liverpool by federal cruisers? Are we going to put an interpretation on this statute which would invite the belligerent to establish a species of blockade at the mouths of our ports to be exercised on such vessels coming out as they shall imagine, if not intercepted, would develop into ships of war? Well, I can only say that I cannot imagine anything more calculated to endanger the peace and welfare of the kingdom, or to lead to troubles and difficulties between the belligerent power and the

neutral, than if that state of things were allowed to exist. I cannot imagine any state of things which it would be more the object of the legislature to prevent, than to make it necessary for the belligerent power, in order to protect itself from having the ports of a neutral turned into arsenals against her, to send a quantity of ships of war to hover upon the coast, upon the boundary line of the neutral power, to snap up the ships the moment that they came over that line. According to the argument of my friend, they would be entitled only to require that the ship should not be completely armed until it was across that boundary. Now your lordship knows, that although it is pretty well settled, I believe that three miles is the boundary and not the variable distance to which ordnance may from time to time travel—practically it is settled at three miles—yet it is impossible to contemplate such a state of things for a single moment without seeing this, that of course it would be the object of the ship built for the purposes of war to get her armament at the earliest possible moment, and it would be her object, therefore, not to go beyond the boundary line more than she was compelled to do. Therefore there would be a constant liability to questions, in the first place, of causeless captures; because, of course, the capture would often take place before the armament was completed. Then it would be said that the ship was not meant for warlike purposes at all; and there would be a constant irritating series of discussions between the belligerent government and ours, as to whether it was not a capture of an innocent merchantman, not proved to be guilty of anything wrong, having no armament on board, and not proved to be meant for warlike purposes. Secondly, the question would arise in other cases, whether or not the attack, or the prosecution of it, had taken place on the one side or the other side of the boundary line. I cannot imagine any state of things more utterly prejudicial to the peace and welfare of the kingdom, or more likely to embroil our government, if our laws were so absurd, in quarrels with other nations. There is another argument. I am now passing from the distinctive character of a ship; and I am dealing with the question whether this distinction is admissible that it is enough if she receives her complete armament on the other side of the boundary line. I say that if the doctrine were laid down that the completion of the armament, or getting her into a condition to commit hostilities, being finished beyond the boundary line, would take her out of an act passed for the purposes for which this act was passed, it would practically render the infringement of that act an easy thing, and the act itself, and the prevention of the mischief it was intended to prevent, as nearly as possible idle and nugatory; because, in the first place, the argument would assume that the whole thing must be done, or you must have it proved that it was meant to be done, within British limits, before you can act. But if the statute aims at prevention, can it be imagined that you are to wait till the thing is done? It is clear you cannot; but according to my friend's argument, you would be obliged to show positively that it was meant to be done within three miles of the coast of Great Britain. Why, of course, in the preparation of these things, it would always take this shape—the external evidence would be withheld, and it would be alleged *non constat* that it was all going to be done within that limit. And yet everybody can see, and must know, especially when you are dealing in such a case as this, with a blockaded country, that all the equipments, and all the manning, and everything, would really come from the neutral state. It would be done wherever it might be convenient, but always under the pretense that it was intended to be done elsewhere. It would be done here when more convenient, and when there was no vigilance to intercept it, and if not, it would be done just over the border, wherever the act could best be evaded and got rid of. Now, in dealing with this statute, it is our duty to bring our case within the terms of the statute, and when I come to reason upon the terms of the statute, I hope to satisfy your lordship that it is within the language of the statute as it stands; and that it is my friend who is trying to put glosses upon, and to get out of the words of the statute, under the influence of these *a priori* notions, that the statute ought not to prohibit, and that it is unreasonable to hold that it does prohibit those things which, by express words, I say are prohibited, and which are plainly within the mischief contemplated by the statute. But I want your lordships, before I go to the next stage of my argument, just to follow me while I work out this point. My friend has supposed that foreign governments have even a right to demand by international law that we shall not allow the things which he considers to be prohibited by this act of Parliament. Well, I do not admit that right; but that, practically speaking, it was considered by those who passed the act that if those things were allowed to take place they would tend to endanger the peace and welfare of the kingdom, is clear, because the act says so. Then you may take it either way; you may take it with my friend, and according to his view, that there was an international duty to prohibit these things; or take it as I prefer putting it, that whether there was that duty or not, the provocation to foreign powers, and the danger of its leading to resentment, would be the same and equally prejudicial to our peace. I want to know how, in reasoning with foreign powers on one or other of those alternatives, they could be expected for an instant to listen to those miserable distinctions which your lordships have heard during the whole of this argument. This is an

important consideration, and it is not wresting the meaning of the words at all; but the import of the words is to prevent mischief, and this shows plainly that the mischief extends in every point of view to those things which my friend wants to take out of it. What? Do you think that a foreign government, whether founding their complaint or not founding it on international law, but having a cause of complaint that our ports are being made arsenals for its enemies; do you think that such a government would enter into the question whether the thing was principally done within the three miles and finished outside of the three miles from our coast, the whole being organized here, the building taking place here, the equipment taking place here, the armament provided here, all under one plan and scheme, and sent from hence, and the manning too? Would a foreign government, if it had a right to complain, admit for one moment such pettifoggish distinctions as those? I think your lordships can judge pretty well of that. They would tell you, "We are not bound by your municipal laws. It is your business to have such laws as will prevent our having just grounds of complaint against you." Our learned judges might say, "that is no reason why we should wrest the construction of our municipal laws." But my friend wants you to wrest the construction against the policy of the statute, to the augmentation of the mischief, and to the prevention of the remedy; and that when it is perfectly plain that the mischief must extend to the cases they want to take out of it. Now, I want to illustrate that, and I will take my first illustration from my friend's own argument. For another purpose he referred to the well-known rule of international law laid down in the case of the *Twee Gebroeders*, which I have mentioned already from the 3d Robinson, that if a person commences the operation, if the ship lies in wait for another within the neutral territory, and goes out of the neutral territory upon the high seas, far beyond the three miles, and there, pursuing the operation commenced within it, captures or attacks a belligerent ship, although the capture, and although the attack, and although the whole engagement took place where we have no territorial rights, and beyond our limits, yet, inasmuch as it is part of one transaction, and is to be referred to the commencement, it is to be all treated as if it were within the territory, and it is as much a violation of our neutral rights as if every part of it had taken place within our territory. I think the application of that principle is not difficult to such a case as one of these schemes for combination of the different elements of armament, all from this country, all by the instrumentality of our people, all part of one design and one operation. I will trouble your lordships with one or two other illustrations. Your lordships will judge how far the application of these cases to the mere construction of the statute is possible; that is quite a different question. I am now dealing with the mischief which the statute was meant to prevent, and therefore I refer to the cases I am mentioning with that view. The next case to which I wish to call your lordships' attention is that of the *William*, which your lordships will find at page 395 in the fifth volume of Christopher Robinson's Reports. That was a case which raised this kind of question: "What was the real destination of a ship which had an intermediate neutral destination, but, as the captor said, simulated in order to disguise an ulterior, final, and true destination to a blockaded port?" Now, there are observations, in the judgment of Sir William Scott, in that case which seem to me to be very applicable in principle to every case of the kind, whatever be the object, that it was meant to disguise or evade. He said this, (the passage I refer to is at page 395:) "Neither will it be contended that the point from which the commencement of a voyage is to be reckoned changes as often as the ship stops in the course of it; nor will it the more change because a party may choose arbitrarily by the ship's papers or otherwise to give the name of a distinct voyage to each stage of a ship's progress. The act of shifting the cargo from the ship to the shore, and from the shore back again into the ship, does not necessarily amount to the termination of one voyage and the commencement of another. It may be wholly unconnected with any purpose of importation into the place where it is done. Supposing the landing to be merely for the purpose of airing or drying the goods, or of repairing the ship, would any man think of describing the voyage as beginning at the place where it happened to become necessary to go through such a process? Again, let it be supposed that the party has a motive for desiring to make the voyage appear to begin at some other place than that of the original lading, and that he therefore lands the cargo purely and solely for the purpose of enabling himself to affirm that it was at such other place that the goods were taken on board; would this contrivance at all alter the truth of the fact? Would not the real voyage still be from the place of the original shipment, notwithstanding the attempt to give it the appearance of having begun from a different place? The truth may not always be discernible; but when it is discovered, it is according to the truth, and not according to the fiction, that we are to give to the transaction its character and denomination. If the voyage from the place of lading be not really ended, it matters not by what act the party may have evinced his desire of making it appear to have been ended. That those acts have been attended with trouble and expense cannot alter their quality or their effect. The trouble and expense may weigh as circumstances of evidence to show the purpose for which the acts were done; but if the evasive purpose be admitted or

proved, we can never be bound to accept, as a substitute for the observance of the law, the means, however operose, which have been employed to cover a breach of it." Again, I observe that I am applying this as between government and government. I am not applying it to the question of the construction of the statute. I am dealing with the mischief. The next case I will trouble your lordships by referring you to is the case of the *Washington*. The *Washington* is a very remarkable case. Its history is this. You will find the case, as it came before the privy council, shortly noticed in the second volume of Acton's Reports, in a note at page 30. It is the case of the *Washington*, Adams; for there are several *Washingtons* in these admiralty books, and it becomes, therefore, necessary to distinguish them. It was decided by the privy council on the 3d of July, 1809, by very great and eminent judges, Sir William Grant, Sir William Wynne, Sir William Scott, and Sir John Nicholl. They reversed a sentence releasing the ship which had been pronounced by the vice-admiralty court at the Barbadoes; and the ship had been taken under singular circumstances. I may mention that the ground of her condemnation, as I understand it, was "rescue;" but that is not material here. The circumstances relating to the history of the ship were investigated in other legal proceedings, and reported in other books, to which I will refer your lordships; but the history was this: The *Washington* was an American ship; she was to be employed in a slave-trade adventure on the coast of Africa before the slave trade was abolished and made illegal by this country, I think in 1803. She was in the port of Liverpool, and there was another British ship there called the *Croydon*. The *Washington* was insured in this country for that voyage. By the law, your lordships already know that the Crown had power to prohibit the exportation from this country of munitions of war generally, and an order in council was made exercising that power, no doubt for purposes connected with the war then pending, and allowing, by way of relaxation of the general prohibition, in favor of British ships, the exportation of certain kinds of munitions of war for the use of the slave trade on the coast of Africa. That was an indulgence given to British ships and not to foreign ships. It was also competent to allow to any ship as much as was wanted for the defense of the ship itself. Now, these two ships were at Liverpool, and had combined in this scheme. The *Washington*, the American ship, wanted guns and powder and the like; but she could not get them under the proclamation consistently with British law; she could only get leave to take a small quantity necessary for the defense of the ship; but the *Croydon*, being a British ship, and having given a bond to employ those things in the slave trade only on the coast of Africa, was able to get the quantity which the *Washington* wanted. They therefore combined together in Liverpool for the purpose of carrying out this scheme. The *Washington* cleared out with the small quantity that she was allowed for her own defense; the *Croydon* got the quantity allowed to a British ship in the slave trade under the order in council, and they agreed that the *Croydon* should meet the *Washington* in the Congo River, on the coast of Africa, and there deliver to the *Washington* those things which the *Washington* wanted. Well, that was done; and the ship was taken, as far as I can find out, for no other reason but that; and I should imagine that if the case had rested there, it would have been a very difficult thing to maintain that as a belligerent capture. But I will not enter into that question now. It so happened that the crew made attempts to rescue the ship afterward, and the privy council condemned her without reference to the original ground of capture, simply on the ground of the attempted rescue. Then afterward there arose in this country and in Scotland, and eventually they came to the House of Lords, questions upon the insurance which had been made upon that ship. And it was held that the assured could not recover upon that assurance, because this was a fraudulent device and a concerted scheme to evade the law of this country. Your lordships will find it reported in two books. You will find it at page 433 of the fifth volume of Taunton's Reports, under the name of *Gibson vs. Service*. It was an action upon a policy of insurance effected upon the American ship *Washington* at and from the Congo River, on the coast of Africa, to Charleston. The cause was tried before Chief Justice Gibbs, at the Guildhall, when it appeared "that at the time when the policy was effected the *Washington* and an English vessel called the *Croydon* were both in the port of Liverpool. The *Croydon* took on board a cargo of gunpowder and arms, and before she sailed her owners had given to the officers of the customs at Liverpool security in treble the value of the arms and gunpowder exported that the same should be expended in trade on the coast of Africa, which is required by the statutes 29 G. II, c. 16, s. 1, 2, 3, and 4, and 33 G. III, c. 2, s. 4, coupled with a proclamation of his Majesty of 11 May, 1803." I pause there for a moment to observe that the clauses in the different acts of Parliament prohibiting exportations under an order in council, or a proclamation, do not enforce that prohibition by any other sanction than the forfeiture of the goods and the ship which exports them. There are no other penalties, and there is no misdemeanor. Then the *Croydon* and *Washington* sailed from Liverpool; but before they sailed it was agreed between their respective owners that the *Croydon* should make over a part of the gunpowder and arms to the *Washington*, on the coast of Africa, conceiving it would still make a

part of the cargo of the Croydon. Gibbs, C. J., thought that the agreement between the owners of the Croydon and Washington, that the Croydon should deliver to the Washington, on the coast of Africa, arms and gunpowder which she had legally taken on board for trafficking on that coast, was illegal; that it was, in effect, an illegal exportation by the Washington, which had given no security, that they should be trafficked with on that coast. The effect was, that the Americans did by this contrivance get arms from this country. If such an agreement could take effect on the coast of Africa, so might it at the mouth of the river Thames, and the consequence would be, that an American would get a full loading of arms and gunpowder at the mouth of the river, and go off insured by English underwriters. And under his lordship's direction the plaintiff was non-suited." Then there was a motion to set aside the non-suit and to have a new trial, and Chief Justice Gibbs said: "The assured is carrying into effect the illegal act agreed on in this country. I have thought a great deal upon this case since I decided it, and I cannot raise to myself a doubt upon the question." His lordship was of opinion that it was in effect an illegal exportation by the Washington, by means of which contrivance the Americans got arms from this country, which, under the order in council, they had no right to do, although they only got them on the coast of Africa, and by a ship which went out as the Bahama did with the Alabama. Another case, arising out of the same facts, came from Scotland to the House of Lords in the year 1840, at a distance of thirty-seven years from the transaction, and your lordships will find that reported under the name of *Stewart v. Gibson*, in the first volume of Robinson's Scotch Appeal Cases. The case begins at page 260. But I content myself with reading a short passage from page 276, which your lordships will find in the judgment of Lord Chancellor Cottenham. "With regard to the question of illegality," his lordship says, "I entertain no doubt that the Court of Session were right in pronouncing this transaction illegal upon the facts as they appear upon the papers. It is not disputed by the counsel at the bar that if we had before us a contract to do that which subsequently took place, it would be illegal. If the contract had been in so many words, that an adventure should go out, relating in part to certain articles of merchandise which might be legally taken, and in part to arms and ammunition, which by the law of the country could not be legally taken, and it was thereby agreed that in order to evade the law no part of the arms and ammunition should be carried out in the ship which was to carry out the other goods, but should be carried in another ship to a place out of the immediate power and jurisdiction of this country, and then should be transhipped into the ship carrying the merchandise, that would be a transaction illegal, in violation of British law, and a contract on which no relief could be given." Then I observe that Lord Brougham, at page 293, though in the first instance he had made some strong observations about the wickedness of slaving, says: "It is needless to remind your lordships that we have in this case nothing to do with the illegality of the slave trade; this transaction was some time before that was put down by law." Now, I cannot but think that these cases have a direct bearing upon the case before your lordships, and there are principles also laid down in a decision in America, which I will refer to presently, to a very similar effect. But I say that these cases are quite enough to show that the transaction is substantially one, whether you divide it, as my learned friend suggests it may be divided in order to be made legal here, or whether you do not so divide it. And I say, if foreign governments have either *de jure* a right to complain, or *de facto* are likely to complain, of such a transaction, they and their complaints cannot be put off by such distinctions as that of attempting to separate the transaction into its elements, and to say, "You cannot complain because one part of it took place in every sense in England, and another part was only concerted, arranged, organized, and dispatched from England, and only not carried into effect in England in order to evade some municipal law of this country." I said that there was also an American case which was worth mentioning in connection with this subject; though I cannot help thinking that too much importance has been attributed to it as an authority bearing upon the particular question which your lordships have now in hand. I allude to the case of the *Gran Para*, which your lordships will find reported in the seventh volume of Wheaton's Reports. I have often seen it referred to as a case having a very important bearing on the whole matter now under argument. And there are some valuable principles stated very forcibly in the judgment to which I am now about to refer your lordships. But I cannot help thinking that specifically it does not go far to rule such a case as that before your lordships, because the facts were these: The ship *Irresistible* was in every sense of the word built, equipped, manned, and armed within an American port, and went from that American port in a condition in which she might have committed hostilities at any moment, but with this disguise only: her armament was entered on her papers as cargo, and her crew were engaged for a limited time as a mercantile crew. She had no commission; and it was not until she got into the territory of the power she was meant to serve that the commission was given, and that the crew, having been discharged, were re-engaged to serve that power. There can be no doubt, my lords, if, in truth, there was not a real break of continuity between her subsequent employment and her original intention, that the circumstances under which

she left the United States were so clear with regard to the nature and character of her armament as not to raise a question of the precise kind before your lordships; but, still with regard to those disguises which were used, it may not be otherwise than useful to refer to what fell from the very eminent judge in that case. Your lordships will find it at page 471 of the seventh volume of Wheaton's Reports. There are various questions argued, which I am not going to trouble your lordships with, relating to this ship *Irresistible*. And Chief Justice Marshall, generally reputed, I believe, to be the greatest lawyer that ever presided over the American courts, said this. It was like most of their cases—a case of restitution of prize. Prize cargoes seem frequently to have come within the United States jurisdiction, although the capturing vessels did not. The Chief Justice said: "That the *Irresistible* was purchased, and that she sailed out of the port of Baltimore, armed and manned as a vessel of war, for the purpose of being employed as a cruiser against a nation with whom the United States were at peace, is too clear for controversy. That the arms and ammunition were cleared out as cargo cannot vary the case. Nor is it thought to be material that the men were enlisted in form, as for a common mercantile voyage. There is nothing resembling a commercial adventure in any part of the transaction. The vessel was constructed for war, and not for commerce. There was no cargo on board but what was adapted to the purposes of war. The crew was too numerous for a merchantman, and was sufficient for a privateer. These circumstances demonstrate the intent with which the *Irresistible* sailed out of the port of Baltimore.

"But she was not commissioned as a privateer, nor did she attempt to act as one, until she reached the river La Plata, when a commission was obtained, and the crew re-enlisted. This court has never decided that the offense adheres to the vessel, whatever changes may have taken place, and cannot be depurated at the termination of the cruise, in preparing for which it was committed; and as the *Irresistible* made no prize on her passage from Baltimore to the river La Plata, it is contended that her offense was depurated there, and that the court cannot connect her subsequent cruise with the transactions of Baltimore.

"If this were to be admitted in such a case as this, the laws for the preservation of our neutrality would be completely eluded, so far as this enforcement depends on the restitution of the prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew, to become perfectly legitimate cruisers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. This would, indeed, be a fraudulent neutrality, disgraceful to our own government, and of which no nation would be the dupe."

I need not read more of it. Of course the circumstances, as I have said, were strong circumstances, and not raising the distinctions relied upon here. But I cannot help thinking that, if the circumstances were such as I have been on this part of my argument throughout supposing, no foreign government would listen for a single instant to the notion, that the whole building, equipment and armament of the ship might be organized and done under arrangements having their origin here, and carried into effect from hence, merely because, forsooth, they were carried into effect, as to the final stage of them, on the other side of the three miles from the British coasts.

Now, my lords, with regard to the principles of construction which ought to be observed with regard to this statute, I need not remind your lordships of the general principles of construction with which you are all so familiar. Of course we all know of the resolutions in *Haydon's case*, which are referred to constantly, in *Plowden*. Your lordships will find at page 694 of the second volume of *Dwarris on Statutes* the following passage, in which the rules are laid down:

"For the sure and true interpretation of all statutes in general, be they penal or beneficial, restrictive or enlarging of the common law, four things are to be discerned and considered;

"1. What was the common law before the making of the act?

"2. What was the mischief and defect against which the common law did not provide?

"3. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth? and,

"4. The true reason of the remedy.

"It was then held to be the duty of the judges at all times to make such construction as should suppress the mischief and advance the remedy, putting down all subtle inventions and evasions for continuance of the mischief *et pro privato commodo*, and adding force and life to the cure and remedy, according to the true intent of the makers of the act, *pro bono publico*." The succeeding observations show that, of course, that is only to be done by the fair interpretation of the language of the act, of course not straining the language, so as to create a crime, as my lord has said more than once, outside of that which is properly and truly expressed, according to a sound construction of the language. But when you have words which, according to a sound construe-

tion, may prevent the mischief and advance the remedy, they should be so construed. When you have words which, according to their natural meaning and sound construction, as they stand, will have the effect of putting down all subtle inventions and evasions for the continuation of the mischief, then that ought to be done. It is not that you are to wrest the language or introduce into the act what you do not find there; but you are not to suffer it to be wrested in order to diminish the remedy, and leave as much as possible of the mischief untouched, under a notion, forsooth, that that is a principle to be applied to a penal statute.

It does so happen that we have the advantage of the ruling upon this subject of an American judge in a case upon their foreign enlistment act; and I will now refer your lordships to that, because I do not think you will depart from the principle of it. It is a case which the moment it is stated explodes one fallacy of my learned friend Sir Hugh Cairns, who, pressed as he was from the bench by some questions as to the extent to which he carried his argument that this statute is limited to what was previously illegal by international law—you will remember Mr. Baron Bramwell tried him with one or two questions as to how far he applied it to the clauses which relate to the enlistment of men in any part of the world—my friend first said that those were matters as to which foreign governments would have a right to complain if they were not suppressed; but he afterward said, O! that part of it does not depend on international law at all, and it has no legitimate place in this statute, although it occupies four-fifths of the whole. It is not to suppress a practice prejudicial to the welfare of the kingdom, but merely to enforce the obligation of allegiance against particular individuals, according to the argument of my learned friend. Now it does so happen that the case to which I refer, which is the case of the United States *vs.* Workman and Kerr, and is reported in Wharton's American Criminal law, at page 905 of the third edition, arose on the enlistment clauses of their act, and not the equipment clauses. It arose out of some filibustering proceedings in Mexico, and this is the language of the learned judge, Mr. Justice Judson, who charged the jury, and it appears to have been received with approbation by the courts of that country. As in this case, the indictment in that case was a very long indictment; it contained ninety-seven counts, setting out in different forms the offenses supposed to be committed against the act. He gets rid, of course, rapidly, of the mere questions of form, and then he says this: "First of all it is an undeniable proposition that all penal statutes are to receive a strict construction. This is a penal statute, and it falls within this rule. The terms used are not to be extended beyond their natural import to fix an offense on the defendants; but this rule, on the other hand, does not require any such construction as to fritter it away and defeat its object, and annul the law itself. I will then state to you in the outset some of these essential rules, and point out their application. We are to look at the spirit, intent, and object of a law; what mischief it was intended to prevent, and in what manner the remedy is to be applied. What, then, is this law? Its great object, the all-pervading object of this law, is peace with all nations; national amity." That he could discover from the mere provisions of the act, but we have it on the face of our act in the preamble. The learned judge continues thus: "which will alone enable us to enjoy friendly intercourse and uninterrupted commerce, the great source of wealth and prosperity; in short, to prevent war, with all its sad and desolating consequences. These being the objects of this law, they are sufficiently important to arrest the attention of both court and jury, and secure to the United States and to the accused a fair and impartial trial." Then he goes on to say, that "Before the jury can convict on this indictment, it must be proved to their satisfaction that the expedition or enterprise was in its character military; or, in other words, it must have been shown by competent proof that the design, the end, the aim, and the purpose of the expedition or enterprise was some military service, some attack or invasion of another people or country, state, or colony, as a military force." Then he goes on to distinguish between what is commercial and what is military, in terms which, if there were not time to be expended on other things, I should have much satisfaction in reading to your lordships.

Now, my lords, having said so much on the general principles of construction to be applied in this case, having entered, as I have done, at some length, because I thought it important, into the question of the mischief, I now wish to take some notice in a general way, before condescending to any particulars, of the line of argument which has been addressed to your lordships, derived from the antecedent history of the matters which led to this legislation, and the particular occasion on which it was made. Now, my lords, I take the liberty of saying that it will be new to me if your lordships' judgment should give any countenance to the notion that the construction of an act of Parliament of this kind is to be limited or cut down by any previous declarations or speeches of statesmen, or members of Parliament, whether at the time of introducing it or at any other time, or by inferences drawn from any transactions of state which are no part of the legislation itself. I not only object on very obvious grounds, some of which I shall mention presently, to that as opposed to all known principles of construction, but I object for a still further reason.

LORD CHIEF BARON. I think there can be no doubt in the mind of any member of

the court that none of those matters which you are alluding to can be taken into consideration by the court when they come to expound the statute. I take it they were introduced, as some other matters have been, to put the court in possession of what may be called the history of the case. They can have no bearing whatever beyond that.

MR. ATTORNEY GENERAL. I took them entirely in that view, and, of course, no one could for a moment imagine that for the direct purpose of construction they could be used.

LORD CHIEF BARON. And I think I may add, with the sanction of all my learned brothers, that those matters, especially of foreign history, foreign decisions, and foreign acts, which the people of this country cannot be supposed to be aware of, or to have any knowledge of, and which they certainly are not bound to know, can hardly be taken into consideration when you come to expound a statute which is exceedingly penal. We must take the statute as we find it, and expound it as an Englishman ought to expound it, and without reference to any other country.

MR. ATTORNEY GENERAL. Beyond all doubt; and the only use of referring to American decisions on the subject is simply this: that where you find them to be the decisions of judges on similar questions arising out of their own law, you give just as much weight to them as you would to the decisions of the same judges upon any other question of law, and no more. I rather imagine that that would be the view that we shall all agree in taking as to the purpose for which American decisions may be referred to; and with regard to these other matters, I was not inclined to doubt that my friend viewed them in the light your lordship mentioned, as part of the history merely; or as my friend Sir Hugh Cairns put it, that they might be referred to for the purpose of placing your lordships in the situation of the legislature, as it were, at the time the act was passed. Of course, I only wish to make such observations upon that part of the argument of my friend as shall restrict these matters to their proper province. I do not think, in point of fact, that for that purpose a reference to transactions such as were referred to, and speeches such as were referred to, is really very germane or useful; because I say that such arguments misrepresent, or at least there is great danger that they may misrepresent, the meaning relative to the subject in hand of the very speeches cited and the very transactions referred to. If a man is, for instance, in Parliament, arguing a question on the second reading of a bill, he does not go into the clauses, or the interpretation of them; but he takes a broad case, he speaks broadly of a patent obvious mischief, the strongest case he can think of that comes within the general policy. The principle of a bill is to repress that mischief and everything which may be conducive to it. He does not go into the details, but of course when you come to the details of legislation, the broad case, the flagrant invasion of the principle, will be surrounded by safeguards, such as are necessary completely to effectuate the object and policy of the act. Therefore it is very idle to say, this or that statesman spoke in such and such terms; they were very appropriate and very intelligible for the purpose for which he was speaking, but as he was not speaking with a view to construe the language of the clauses of the act, it would be most absurd to suppose that his having used that language can throw any light on the object and policy of the act. In truth, nothing was said which I should object to every member of the court reading over and over again, if it had any bearing upon the matter, because it bears out my view of the general purpose of the act, namely, that it was to vindicate our neutrality, and to prevent our being imbroiled with foreign nations by operations, as to which other countries might say: "Whatever you call them, practically they are hostile to us." I think that was the view taken of it at all times; but as I do not think that ultimately we get any particular good from that part of the argument, I do not intend to dwell upon it in addressing your lordships. But there was one argument which my friend Sir Hugh Cairns, by an ingenious device, contrived to make do duty in a more important direction, and that is what he said upon Washington's rules which preceded the enactment of the American statute. I have had on many occasions greatly to admire the ability, the ingenuity, and the courage of my learned friend; never more than on this occasion; and on this occasion in nothing more than with respect to the reference which he over and over again made to those rules of Washington, as if they had become landmarks in the law of nations, as if they had laid down some fixed principles of international law, and then that the American statute having intended to embody those principles, and our statute, to some extent, being framed on it as a precedent, therefore you are to look at those rules as embodying the principles meant to be protected and defended by those acts. What is the history of those rules of Washington? I can give it you very shortly. I will not read the passage, but I will give you the reference if you will have the goodness to make a note of page 712 of the last edition, that is, Lawrence's edition, of Wheaton's International Law. Your lordships will find in a note there, concisely stated, what I think you will also find in an exceedingly excellent pamphlet, which it is, perhaps, legitimate to mention, and which has been lately published by a gentleman well known to me, Mr. Gibbs. I really think that the history of the matter is so well collected there that I cannot do better than refer to it.

LORD CHIEF BARON. It is extremely useful to those who wish to look at the authorities; it collects them all together in a very convenient form.

MR. ATTORNEY GENERAL. They are so accurately brought together that I felt myself justified in mentioning it, although ordinarily we do not mention any publication of so recent a date. My lords, the real truth of the case is this: the policy of the American cabinet with regard to the mode of maintaining its professed neutrality in the war then lately broken out between England and revolutionary France was undecided, and Washington's views fluctuated and changed from time to time. The American government were in this peculiar situation, they were not able to permit the equipment of warlike vessels in their ports equally and impartially by both belligerents, because they had a treaty with France, of which you will find the details in the publication I have mentioned, which guaranteed France against privateers being armed against France in the American ports, and against any prizes taken from the French being brought into those ports.

Now you will find, both in the chapter of Chancellor Kent's work to which my friend referred, where those rules are mentioned, and in Wheaton's International Law, and everywhere else, this to be laid down as the law of nations on the subject of the equipment of ships of war in a neutral territory; that it is perfectly competent, consistently with international law, for the neutral state to permit either party to make warlike equipments of ships, everything which is forbidden by the foreign enlistment act on any construction of it, without breach of neutrality, or without any breach of international law, provided it be equally and indifferently permitted, by the neutral country, to both parties. But the Americans were placed in a situation by their treaty with France, which disabled them from allowing to England that which France was doing. So that the effect of the treaty was this: although it seemed that international law had made some provisions for positive stipulation of exceptional advantages in favor of one belligerent, if those stipulations had been made before the war, yet there being nothing of the kind positive here, and it being merely a stipulation that the enemies of France should not equip ships of war against France in ports of the United States, it was impossible for the United States to permit France herself to equip such ships without violating the principle of neutrality, because they could not allow Great Britain to do the same. That led to the whole complication, and those rules which have been mentioned are not rules expressing, or at any time supposed to express, absolute obligations imposed by international law upon the neutral government, but they are, as Chancellor Kent says in the passage which my learned friend Sir Hugh Cairns referred to, founded on the principles of international law; which are these, that the neutral government has the absolute right to prohibit a belligerent government from carrying on any operations of that description within its territory; and having the absolute right to do that, it will fail in its duty of neutrality if it does not either prohibit it to him, or else allow it also to his adversary. Well, these rules, made by a government which could not allow it to both parties, are made in assertion of their territorial rights against both, in order to avoid partiality to one contrary to the law of nations. That is the whole and sole connection of those rules with the subject of international law. I think I will not pursue the matter further, though that connects itself with the American statute; for I may conveniently, I think, take up the history of the American statute when we begin to-morrow.

MR. MELLISH. If your lordship will allow me, I will hand you up this copy of the decree about the Oreto.

Adjourned to to-morrow morning at ten o'clock.

FOURTH DAY.—FRIDAY, *November 20, 1863.*

MR. ATTORNEY GENERAL. My lords, when your lordships rose yesterday, I had been referring to a subject which was treated as of considerable importance by my learned friend, although in my opinion, when its meaning and bearing are rightly understood, it will turn out to have none; yet I do not wish to leave that undemonstrated, and therefore I will say a little more about it. I allude to the rules which were made by President Washington and by his government, on the 3d of August, 1793. They were headed, "Rules adopted by the American cabinet as to the equipment of vessels in the ports of the United States by belligerent powers, and proceedings on the conduct of the French minister." My lords, it was an act of state, a political act, which was undoubtedly in this sense connected with rules and principles of international law—that it was warranted by those rules and principles under the circumstances in which the United States were then placed; but the notion of its being intended to be, or being in any sense whatever, an abstract declaration of the obligations and the rights of neutral states under those circumstances, is one for which there is absolutely no foundation either in history or in law.

Now, the real circumstances connected with those rules will be best understood, I

think, by, in the first place, bearing in mind the principles of law which I mentioned yesterday, and which your lordships will find stated and explained concisely, but at sufficient length, at the beginning of the lecture of Chancellor Kent, from a passage of which Sir Hugh Cairns read to your lordships upon that subject; it is a lecture on the general rights and duties of neutral nations; and for my purpose it will be quite enough to call your lordships' attention to the short headings in small letters at page 124 and 126, to show what is the nature of the subject which is being treated of by Chancellor Kent in that lecture, and in the passages which precede the one cited by my learned friend as to these rules. The first head is, "Neutrals must be impartial." That was what I mentioned to your lordships yesterday. Now, that stands on common sense, evidently, but it is a principle recognized by international law, that if a neutrality is professed, it shall be an impartial neutrality. Consequently you will not give advantages to the one belligerent which you refuse to another, unless, indeed, (for it seems to be considered, by the writers on international law, subject to this rather remarkable exception,) you are bound to do so by some antecedent positive engagement entered into with the one party not in contemplation of those particular hostilities. It seems to be thought that, subject to that qualification, it is a settled maxim; and so far it is a duty of neutrality toward other governments, that you will be impartial, that you will not give to the one an assistance or a liberty within your dominions which you do not equally allow to the other. That is the branch of the subject which relates to the duty of a neutral toward the belligerents. Then the next head is at page 126, which is the duty of the belligerents toward the neutral. "Neutral territory inviolable."

Mr. BARON CHANNELL. Are you citing from the marginal paging?

Mr. ATTORNEY GENERAL. It is at page 126 of my edition; there are just within an inner margin, in small letters, the words "neutral territory inviolable."

Mr. BARON CHANNELL. Your edition is a later one than mine; the marginal paging is preserved throughout all the editions.

Mr. ATTORNEY GENERAL. I beg your lordship's pardon; page 117 is the marginal paging.

Mr. BARON CHANNELL. I have got it now.

Mr. ATTORNEY GENERAL. Having mentioned the duty of impartial neutrality first, which is a duty, as I have said, of the neutral to the belligerents, he now mentions the duty of the belligerents to the neutral, "neutral territory inviolable;" and he goes into that.

My lords, I of course am not going to detain your lordships from the real question by a disquisition upon these subjects; but it will be perfectly well known to all, I think, who have examined the books, that even a capture or an act of hostility within the neutral territory is a wrong to the neutral rather than a wrong by the one belligerent to the other; and it is upon the ground of vindicating their own rights, that neutrals, whose territory may be invaded by acts of this description, in comity take care that restitution is made to the other belligerent. Therefore Kent, after stating the duty of impartiality by neutrals toward belligerents, goes on to mention the duty of belligerents toward neutrals—that there is to be no violation of territory. That duty extends to this. In the first place there is of course to be no act of hostility, nothing of that nature which Sir Hugh Cairns spoke of as a proximate act of hostility, within the neutral dominion; not only that, but no acts or operations whatsoever connected with the war and having for their object the promotion of the war are to take place within the neutral territory on the part of either belligerent, without the consent and permission and against the will of the neutral sovereign. That is the basis and the principle of Washington's rules. That is to say, it was to protect their own neutrality from the assertion against their will by the French republican government of the right to arm and organize vessels of war and expeditions within their territory, which the history shows that the French republican government were asserting upon a strained construction of negative terms in a treaty.

Now the political circumstances connected with that act of Washington, which it is quite necessary to remember in order thoroughly to understand the matter, were these: The United States government, before issuing the rules which I have been mentioning, which was on the 3d of August, 1793, had upon the 5th of June in the same year given notice to the French agents within their dominion, that they would not permit those things to go on any longer which were being done; and had insisted that they should not bring in any prizes taken by any vessels which might be equipped or got ready for war after that date. But the French minister and his agents continued to do it in spite of the United States government; and that government, from reasons of policy, though they had engaged to Great Britain to prevent it, abstained from using the means in their power for a certain time to enforce those regulations. Your lordships will find the state of the case very distinctly explained in a letter of Mr. Jefferson to Mr. Hammond, dated the 5th of September, 1793, which is an annex to the treaty between Great Britain and the United States of the years 1794-95. My lords, I am reading from Martens's Collection of Treaties, the sixth volume of the Supplement, and

your lordships will find that treaty with its annex at the pages 326 to 386 of that volume. Now, as I said, this letter is annexed to the treaty, and is referred to for the interpretation of one of its articles. And this is Mr. Jefferson's account of the circumstances, which will at once place your lordships, I think, in a correct view of the true position of the parties, and the true meaning of this political act of the United States. After referring to a letter which he had received from the British minister, Mr. Hammond, as to certain ships, and the previous correspondence, he proceeds thus: "We are bound by our treaties with three of the belligerent nations by all the means in our power to protect and defend all vessels and effects in our ports or waters, or on the seas near our shores, and to recover and restore the same to the right owners when taken from them. If all the means in our power are used, and fail in their effect, we are not bound by our treaties with those nations to make compensation. Though we have no similar treaty with Great Britain, it was the opinion of the President that we should use toward that nation the same rule which, under this article, was to govern us with the other nations, and even extend it to captures made on the high seas, and brought into our ports, if done by vessels which had been armed within them. Having, for particular reasons, forbore to use all the means in our power for the restitution of the three vessels mentioned in my letter of August the 7th, the President thought it incumbent on the United States to make compensation for them; and though nothing was said in that letter of other vessels taken under like circumstances, and brought in after the 5th of June," (that was the date at which the United States government had said, "We will not permit it,") "yet, when the same forbearance had taken place, it was and is our opinion that compensation should be equally due." And then he proceeds to say that it would be applied to cases occurring even later, if under the like circumstances. So that the state of things is made manifest; in the first instance, the French agents supposed that the treaty gave them not only negative rights, but positive rights to equip and arm vessels as much as they pleased within the ports of the United States, and, until the 5th of June, they did so under that impression, and no notice was given to them by the United States government that they were not to be at liberty to do so; but on the 5th of June the United States issued a proclamation, and gave notice that this state of things was not to go on. Nevertheless, it did go on; and, as Mr. Jefferson says, there were particular reasons why, although they had promised the British minister that it should be stopped, the United States government abstained from using the means in their power to stop it. Under those circumstances they held themselves bound to make restitution, and it was under the circumstances of those peculiar treaties, by which they were bound to give effect to the rule of impartial neutrality as far as they could, and at the same time to protect themselves from the assertion by a foreign power of a right, against their will, and against the notice which they had given of their dissent and disapprobation, to equip and arm vessels within their limits, that these rules were adopted by the American cabinet; and well may Chancellor Kent say, as he does say, (and it is all that he says of them,) that those rules had a perfectly good foundation in the law of nations. He says, at the marginal paging 122, the passage which Sir Hugh Cairns read, "The government of the United States was warranted by the law and practice of nations in the declaration made in 1793 of the rules of neutrality, which were particularly recognized as necessary to be observed by the belligerent powers in their intercourse with this country. These rules were," and then he states the substance of those rules, without their exceptions, and I will refer to them in a moment, as far as is necessary. He goes on to say, "Congress have repeatedly by statute made suitable provision for the support and due observance of similar rules of neutrality, and given sanction to the principle of them, as being founded in the universal law of nations." The principle of them to which he refers is merely this—on the one hand the observance of the obligation of an impartial neutrality toward the belligerents, and, on the other hand, the protection of the neutral's own territory from an unauthorized use of it by either belligerent, or both belligerents, for any purposes connected with war, which the government thinks fit to prohibit; that is all.

Now, the reason why my learned friend laid so much stress upon these rules, and tried to make so much of them, is obvious. In that political act done under those circumstances, and before there was any legislation whatever in the United States on the subject, the government took a distinction, which we find upon the face of the rules, between equipments *ancipitis usus* and those which were essentially warlike; and my learned friend wants you to infer that, because in that political act done under those circumstances by Washington's administration, it was thought, in the absence of legislation, expedient to make that distinction for their present government and guidance, therefore you are to import that distinction into the interpretation of all subsequent legislation which has taken place upon the subject. It seems to me that anything more extravagant could not possibly be conceived; and, indeed, when we look at the rules themselves, it will not, I think, appear that that distinction clearly extends so far, even as my learned friend imagines under the rules, because I observe that there is only one of those articles which relates to the original arming and

equipping of vessels. I do not mean to argue whether or not arming and equipping are to go together there, but at all events "the original arming and equipping of vessels in the ports of the United States by any of the belligerent parties for military service, offensive or defensive, is deemed unlawful." That is the first rule. Then the next rule permits the equipment of merchant vessels; that is lawful. The third rule, I think, clearly speaks of the equipment of vessels already in existence, and in the service of the government; not vessels to be brought into existence by operations within the United States, but vessels existing already in the immediate service of the government. "Equipments in the ports of the United States of vessels of war in the immediate service of the government of any of the belligerent parties, which if done to other vessels would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful," which, in fact, is merely the ordinary hospitality shown by all countries in the world to all ships of war, (which I will observe upon when I come to the eighth section of our act of Parliament,) with an exception with regard to prizes taken from France, founded on the treaty obligations toward France. Then the fourth rule is this: "Equipments in the ports of the United States by any of the parties at war with France of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful, except those which shall have made prize," &c. That, no doubt, was the article which my learned friend particularly referred to, because he thought it useful to him. It was a particular distinction, which, in the circumstances which I have mentioned in this act of state antecedent to legislation, the United States government thought fit to make, and the reason is obvious. They say, We prohibit, as an invasion of our sovereignty, independently of any legislation whatever, acts for manifestly warlike purposes within our territory; but we do not think it necessary to carry that provision further in the absence of legislation, upon the general principles merely of the law of nations, nor to treat as an invasion of our territory acts which are doubtful and equivocal in their nature. We do not at present exercise our power of prohibiting such acts. Your lordships will see the meaning of that, more especially when you remember what Mr. Jefferson said in the letter which I have read, namely, "We are bound by our treaties with three of the belligerent nations, by all the means in our power to protect and defend their vessels and effects in our ports or waters, or on the seas near our shores." Therefore, being able to limit, and intending to limit, according to their own sovereign will and pleasure, the extent of the prohibition which was then made by the sovereign authority, they limited it in that way. But how that can be imported into the construction of the subsequent statute appears to me to be a thing utterly unintelligible; because, looking at the abstract principle of law which entitles foreign nations to do the one thing or the other, it depends entirely upon the will of the sovereign power of the country where it is done.

My lords, my learned friend Sir Hugh Cairns, I think, in his argument upon that subject forgot that it is the practice of all nations, when war breaks out in which they intend to observe neutrality, by their sovereign power to regulate the extent to which they will allow what otherwise would be permissible to foreign countries; and the principle always has been to give hospitality to the ships of war and other ships of foreign countries in those ordinary things which are universally necessary, and which do not tend to increase the means of carrying on war previously existing. And it really would be just as reasonable to say that the rules which our government issued by proclamation at the beginning of the present war between the United States and the Confederate States, which your lordships will find in print, I think, in a note to Mr. Wheaton's book, at page 717, of the last edition.

MR. BARON CHANNELL. And at page 12 of the Appendix.

MR. ATTORNEY GENERAL. No, my lord, I do not mean the neutrality proclamation, I mean the rules according to which, by another proclamation, in February, I think, upon the occasion of the Tuscarora and the Nashville, two ships, which were a good deal talked about, coming into our waters, our government thought fit to regulate, as against foreign belligerent powers, the extent to which their ships should enjoy the hospitality of our shores. It is a proclamation exactly *ejusdem generis* with these rules of 1793, and of which it may be said, with the same truth with which Chancellor Kent speaks of those rules, that it is perfectly warranted by the rules of international law and founded upon them; namely, founded upon the principle of doing what, in our judgment, we think best, to preserve an impartial neutrality, and to protect our territory from any assumption of power within it which we do not think fit to permit. I am not going to read those rules to your lordships. I tell you where you may find them, and I say that you might just as well lay hold of those rules, and say, that there a line is drawn, and that everything within those rules is against the general principles of international law. Everything which they permit is assumed to be permissible, independently of the particular will of the sovereign power, and it is said that it must therefore be presumed to be a principle which was borne in mind in subsequent legislation upon the same subject. Nobody, of course, could read those rules of our government without seeing that a contention of that kind, with respect to them,

would be perfectly monstrous, if it were brought forward to regulate the interpretation or even to influence the interpretation of subsequent legislation in our country, which was language of its own, which language in its natural sense would go beyond those rules. I gave your lordships a reference to the page, it is page 717 of Wheaton. It would be clearly unreasonable in the one case, and it is equally unreasonable in the other.

But, my lords, I have Washington's own authority for saying so; and I have the authority of other great persons, judges of the American courts, proving that they never took this view of those rules of theirs, upon which my learned friend builds his argument, that forsooth you are to look upon this foreign enlistment act as a mere statute to give sanction to previously existing international duties, and not to go beyond the limits of those obligations, which limits he in this arbitrary way attempts to define.

Now, I will refer your lordships to that which my learned friend mentioned, but thought it unnecessary to read, but which, I cannot help thinking, is at least as germane as what he did read. I mean the President's speech to the two houses of Congress when announcing those rules, and his other acts connected with the same subject, and requesting that they would proceed to legislation. I will read it as matter of history, at all events as pertinent as that which we have heard connected with the rules. The President, on the 3d of December, 1793, said this: "As soon as the war in Europe had embraced those powers with whom the United States have the most extensive relations, there was reason to apprehend that our intercourse with them might be interrupted, and our disposition for peace drawn into question by the suspicions too often entertained by belligerent nations." And I observe, my lords, there, that this falls in with the line of argument which I submitted to your lordships yesterday with respect to the mischief; that the mischief is not to be measured by the provable obligations which you can establish by what my learned friend called the letter of international law, though I confess I do not know where the letter of international law is to be found; but the suspicions entertained and feelings excited equally endanger peace. Washington goes on: "It seemed, therefore, to be my duty to admonish our citizens of the consequences of a contraband trade, and of hostile acts to any of the parties, and to obtain by a declaration of the existing legal state of things an easier admission of our right to the immunities belonging to our situation. Under these impressions the proclamation which will be laid before you was issued. In this posture of affairs, both new and delicate, I resolved to adopt general rules," (those are the rules in question,) "which should conform to the treaties, and assert the privileges of the United States. These are reduced into a system, which will be communicated to you. Although I have not thought myself at liberty to forbid the sale of the prizes permitted by our treaty of commerce with France to be brought into our ports, I have not refused to cause them to be restored when they were taken within the protection of our territory, or by vessels commissioned or equipped in a warlike form within the limits of the United States." Then he proceeds thus: "It rests with the wisdom of Congress to correct, improve, or indorse this plan of procedure; and it will probably be found expedient to extend the legal code and the jurisdiction of the courts of the United States to many cases, which, though determined on principles already recognized, demand some further provisions." I think, therefore, there is nothing whatever which would lead your lordships to suppose that this act was introduced simply for the purpose of enacting as law the provisions of those rules; and it is manifest, when we compare the one with the other, that they differ so materially that it is impossible that difference should have been without intention and without purpose.

Now, my lords, I said that I could show you that the idea of this foreign enlistment act having been intended simply to enable the United States to enforce against its subjects obligations which were due from it to other belligerent governments, is an idea totally inconsistent with the judicial view of the matter, which has always been taken in the United States. I will mention to your lordships in connection with that subject two cases: one, the case of the *Alerta*, which, in the ninth volume of Cranch, at page 355, where Mr. Justice Bushrod Washington gave the judgment of the court; and the passage which bears upon this subject is the following: "A neutral nation may, if so disposed, without a breach of her neutral character, grant permission to both belligerents to equip their vessels of war within her territory; but without such permission the subjects of such belligerent powers have no right to equip vessels of war or to increase or augment their force either with arms or with men within the territory of such neutral nation. Such unauthorized acts violate her sovereignty and her rights as a neutral." Nothing can be clearer than that, but it does not rest on that authority only; for we find the same doctrine laid down in the case of the *Estrella*, which is frequently referred to in other American cases, as a case of high authority; and which is in the fourth volume of Wheaton's Supreme Court Reports. The passage in question is in the judgment of the court at page 308, which was delivered by Mr. Justice, afterward Chancellor, Livingston. He says there: "So long as a nation does not interfere in the war, but professes an exact impartiality toward both parties, it is its duty as

well as right, and its safety, and good faith, and honor demand it, to be vigilant in preventing its neutrality from being abused for the purposes of hostility against either of them." I do not know that the principle for which I contend, as embodied in the law which I am now asking your lordships to administer and expound, could be better expressed than that. "This may be done, not only by guarding in the first instance as far as it can against all warlike preparations and equipments in its own waters, but also by restoring prizes taken in violation of its neutrality." Then he proceeds thus: "In the performance of this duty, all the belligerents must be supposed to have an equal interest, and a disregard or neglect of it would inevitably expose a neutral nation to the charge of insincerity and to the just dissatisfaction and complaints of the belligerent, the property of whose subjects should not, under such circumstances, be restored. The United States, instead of opening their ports to all the contending parties when at peace themselves, as may be done if not prevented by antecedent treaties, have always thought it the wisest and safest course to interdict them from fitting out or furnishing vessels of war within their limits, and to punish those who may contribute to such equipments." Therefore, Mr. Justice Livingstone thinks that it is perfectly competent, where there is no treaty to the contrary, to allow both parties to come into your ports and equip; but he thinks it the wiser and the safer course, and the course most consistent with the safety, good faith, and honor of a nation professing neutrality, especially as we know that both parties in any given war will not practically enter for such purposes the ports of the same neutral, to take the course which the United States have done—namely, to interdict them both from fitting out or furnishing, and to punish those who may contribute to such equipments.

MR. BARON BRAMWELL. What are we to understand by that? According to his opinion, but for the special prohibition in any particular case, would it be lawful for the subjects of a neutral state to fit out and arm a vessel, so as to be ready for hostilities when it left the neutral port?

MR. ATTORNEY GENERAL. I apprehend that it is undoubtedly so. There was no municipal law in the United States or here, before the foreign enlistment act, to prevent it.

MR. BARON BRAMWELL. Nay, as I understand, there was no international law.

MR. ATTORNEY GENERAL. No international law whatever.

MR. BARON BRAMWELL. No international law which would prohibit, for instance, the arming, manning, and in every way equipping a confederate ship in this port for the purpose of committing hostilities.

MR. ATTORNEY GENERAL. All that is necessary for me to say is this—

MR. BARON BRAMWELL. I beg your pardon. All I want to know is this: what are we to understand as Mr. Justice Livingstone's opinion there?

MR. ATTORNEY GENERAL. I think that it was his opinion, that there was no international law which would prevent it, provided the United States permitted it equally to both parties. My lords, so far as I am concerned, I believe it is a matter as to which those who discuss these questions do not fully agree. Some think that, on sound views of international principles, such things ought not to be permitted by neutral nations; but, as far as I can find, American authority is distinctly in accordance with the answer which I gave your lordship as to what I understood Mr. Justice Livingstone to hold, namely, that there is no international obligation, provided it is allowed equally to both parties, and that it rests merely upon municipal law. It was with reference to that subject that I referred to what Wheaton said of the controversy between Lampredi and Galiani; it is just the same thing to a belligerent who suffers, whether a ship fully armed and equipped for war is sold without having been previously equipped expressly with a view to that sale, or whether it was equipped with a view to that sale, because she equally comes out of the port of a neutral nation an instrument immediately adapted for hostilities.

MR. BARON BRAMWELL. What occurred to me at the time as a difference is this, that a vessel may be fully equipped and armed in every particular except the fighting crew; then if you sell her, you sell her still in an innocent condition; but what occurred to me might make a difference would be, that in addition to what you might call her own capacity of mischief, she had the requisite crew on board—what struck me was, that then the port would be a station of hostilities.

MR. ATTORNEY GENERAL. I will address myself to that presently; but I think your lordship will see that although it is perfectly true that the passage which I read took no notice of the presence or absence of the crew, yet on the other hand it must be tolerably obvious that the government which purchases such a vessel fully equipped and fitted out for war would take care to provide itself with a crew to take the vessel out of port. And in the ordinary and natural state of things, it is not to be presumed that a vessel would leave port without a crew, and I do not find anywhere the least trace of such a view being entertained as that the lawfulness or unlawfulness of such a transaction would depend upon the presence or absence of a crew sufficient to navigate the vessel for warlike purposes when she left the port.

My lords, before I address myself a little to the observation embodied in the words,

"station of hostilities," I will trouble you with one more reference in connection with the same subject, which we shall find, I think, in a note to Laurence's Wheaton; it refers to a recent act of state rather than a judicial act, but it is not, I think, unworthy of attention in those circumstances. You will find it at page 727, in a note to that page of the last edition of Wheaton's Elements. It was an act of state; in fact, an opinion, I think, of the attorney general, adopted by the government in 1855, upon the occasion of a question arising between this country and the government of the United States as to some recruiting for the Canadian service which was going on in New York. I think it may be in your lordship's recollection that such a question arose. This is what is said in the opinion: "It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes without the consent of the neutral government. The undertaking of a belligerent to enlist troops of land or sea in a neutral state without the previous consent of the latter is a hostile attack on its national sovereignty. A neutral state may, if it please, permit or grant to belligerents the liberty to raise troops of land or sea within its territory; but for the neutral state to allow or concede the liberty to one belligerent, and not to all, would be an act of manifest partiality, and a palpable breach of neutrality." Now, nobody can help seeing that this would meet the point which your lordship has put; because troops by land or sea involve the case of the crew, and the view there expressed by the attorney general of the United States and adopted by the government was, that, if it is given to one it must be given to all. Then he says: "The United States constantly refuse this liberty to all belligerents, applying with impartial justice that prohibition as made known to the world by a permanent act of Congress." I cannot find the least trace of the contrary view in the American authorities. I am quite aware that Monsieur Hautefeuille, and some other modern writers who have discussed debatable questions of the law of nations, would not agree to that proposition; and your lordships will not at all understand me as desiring to maintain the one side of the question, or the other, as an abstract proposition; all that I mean and desire is to show, that as between the government of Great Britain and the United States it certainly is not to be assumed that the view of international law which my learned friend Sir Hugh Cairns's argument has supposed, is a view which has ever been established, nor can I in any books find it laid down as the view settled and established by that species of authority which alone can make international law.

LORD CHIEF BARON. It is not very easy to say what authority will make absolutely international law.

MR. ATTORNEY GENERAL. General consent, I imagine, my lord, is necessary, and the usage of nations.

LORD CHIEF BARON. What a wide proposition that is: "general consent."

MR. ATTORNEY GENERAL. It is a very wide proposition, my lord, no doubt. We recollect that in ecclesiastical matters there is a proposition called the Rule of St. Vincent of Lirin, "*quod semper, quod ubique, quod omnibus*;" and if that were rightly interpreted I believe that we should be within very large limits of ecclesiastical liberty. Of course I do not mean, nor is this the time or place, to undertake to establish in what sense the words are used, but we know that those words are used in a practical sense. When there is anything approaching to a general consent of nations, illustrated by practice, and acquiesced in by practice, we may say (especially when the writers upon the subject lay it down as law) that that is a settled principle of law. But when you have all the writers that I can find in a particular country taking another view of the matter, and when the most which can be said of a view which, perhaps, in the abstract, may be reasonable, is that it has been advocated upon abstract principles of reason, but cannot be found recognized in practice, it cannot be assumed for any definite purpose to be such a settled principle of international law that you are to take it as the basis of the legislation of any nation; nor can one nation impose it upon another and say, "We are entitled to require you to govern your conduct by it."

My lords, let me make an observation upon the expression, "a station of hostilities," so convenient as it is to express in a short form the substance of an argument which has been addressed to your lordships. I connect it with what my learned friend, Sir Hugh Cairns, spoke of as proximate acts of war. Now, I say that there is no authority whatever for the proposition that taking a ship out of a neutral port with the means of carrying on war, is an act of hostility or a proximate act of war; it is no doubt an act tending extremely to injure in its result the neutral government, and so are the acts which the argument on the other side of this case seeks to vindicate; so is the act of sending out a ship not armed for war, but ready to receive her arms; so is the act of sending out a ship prepared for warlike purposes, but in which some things are left to be done when she gets beyond a certain line of sea. There are many cases in which the supposition that there would be cruisers to intercept her is practically an idle one; cases in which there certainly will not be such cruisers. For instance, if at the beginning of this war the United States had thought it expedient to use this country for the purpose of creating armed vessels, the ports of the Confederate States being blockaded, it would be perfectly ridiculous to say that you would have been possible for

the Confederate States, by any means in their power, to prevent the application of armaments to ships outside the boundary line, of the British waters. A multitude of such cases will occur. The suggestion that in any case the thing is to be prevented by such means is unsatisfactory, because we know that even a blockade when established is very easily evaded, and therefore to rely upon that to prevent the means organized within neutral territory from coming together so as to make the instrument of war complete, would be a very idle and a very unsafe reliance.

My lords, I therefore pass from that subject, and I come at once to the real point, as it seems to me. Of course I may seem in that respect to be drawing censure upon myself for having occupied your lordships' attention for some time with preliminary matter. A great part of it I think was perfectly germane—I mean what I said about the mischief which the statute was meant to prevent; the rest I must presume to be germane, because my learned friend, for whom I have so much respect, treated it as being so, otherwise I should not have introduced it. I now come to the statute. I go to our statute at once, because I do not think it desirable to go independently into an examination of the American statute, except so far as a comparison of the two may illustrate the construction of our own; and therefore, what I have to say upon the American statute I shall connect with the examination which I shall make of the language and structure of our own.

Now, I will first recur for a moment to the preamble, upon which I have made more than one observation, although I now propose to apply what I have to say upon it to what I have not noticed before, rather than to what I have. In the first place, I call your lordships' attention to the fact that on the face of this preamble "the peace and welfare of this kingdom" is the only thing spoken of as to be protected, and there is no indication, therefore, of an intention to limit it by any assumed obligations of this kingdom, or by the precise extent of any obligations of this kingdom, to any foreign belligerent power. Again, a very singular attempt was made to get rid of a difficulty by some of my learned friends, when they said, with regard to the greater number of the clauses of the statute, (those relating to enlistment,) that they did not really turn upon the same principle at all; that they were merely intended to compel the subjects to render due allegiance, and to vindicate the dignity of the Crown, and were not connected with neutrality or international obligation. Again, I observe that there is nothing in the statute about vindicating the dignity of the Crown, and nothing about the allegiance of the subjects; but the two things are coupled together, namely, the enlistment and engagement of the subjects to serve in war in foreign service, and the equipping, fitting out, and arming of vessels, all of which it is said may "tend to endanger the peace and welfare of the kingdom." I now ask your lordships' attention to the manner in which this fitting out and equipping is spoken of; what is it that is mentioned in the preamble? "The fitting out and equipping and arming" (which we agree is just the same in substance as if we had the disjunctive instead of the conjunctive) "of vessels by his Majesty's subjects, without his Majesty's license, for warlike operations." It is not the fitting out and equipping in any particular manner, but in the preamble as well as in the body of the statute it is for a particular purpose, "for warlike operations." If it is for warlike operations, then it may produce the mischief which is to be repressed. Then, lastly, which I think extremely important, though of course your lordships are not likely for a moment to forget it, the second recital in the preamble is, "And whereas the laws in force are not sufficiently effectual for preventing the same." Therefore we know that, applying those rules as to the interpretation of statutes, which all the authorities point to, we are first to consider what was the previous state of the law; then what was the mischief; and the state of the law will be altered, so far as the words of the act according to their just construction will admit, by the suppression of that mischief, which it was seen that the previous state of the law was not sufficiently effective to suppress. It is obviously, therefore, intended (whether it is done or not is another question) to make a law which shall be sufficiently effectual for preventing this mischief, (*preventing, not punishing,*) the previous laws not having been sufficiently effectual for that purpose. The legislature, of course, may have failed as utterly as the argument of my learned friend assumes; they may or may not; but one thing is perfectly clear, that if they have failed, it has been in an act which they intended to make sufficiently effectual for preventing the mischief, which they regarded as tending to endanger the peace and welfare of the kingdom, and which might arise from the acts which are there described.

Now I pass to the clauses, and your lordships will bear in mind that in this act there are only eight clauses which precede the general machinery, as to the way of recovering penalties, and so on. In substance, therefore, for our purpose, we need only regard the first eight clauses. Of those eight clauses, five, the first being a repealing clause, relate to the subject of enlistment. Now, my learned friend's argument is, that this statute is to be limited in its construction by the precise rules which he deduces (on grounds which I have already observed upon, and will not, of course, recur to) as the previous rules of international law.

LORD CHIEF BARON. I observe that there was no previous act in respect of ships.

MR. ATTORNEY GENERAL. None, my lord.

LORD CHIEF BARON. But there was with respect to the enlistment of soldiers?

MR. ATTORNEY GENERAL. Yes, my lord.

LORD CHIEF BARON. It seems odd that the act, as far as it is directed against the enlistment of soldiers, exempts from its operation not all those persons who had enlisted before there was any law against it at all; but it says that the act is not to extend to persons enlisted before certain times therein specified.

MR. ATTORNEY GENERAL. I beg your lordship's pardon; if your lordship will look to the words at the end of the third clause, I think you will see that the persons in the situation which your lordship has described are left to the operation of the former law. The repeal does not extend to that.

MR. BARON CHANNELL. If they had offended against the statutes repealed by this act they would be still liable?

MR. ATTORNEY GENERAL. Yes, my lord. My lords, I do not think it necessary or useful to go into the defects of the old enlistment statutes.

LORD CHIEF BARON. The act received the royal assent on the 3d of July, 1819, and persons enlisting between July and the 1st August, 1819, within the United Kingdom, and so on, are not within the act.

MR. ATTORNEY GENERAL. No, my lord.

LORD CHIEF BARON. So that though they may have broken the other law, they are not within the operation of the old law, because that is repealed, and their case is not saved, I think.

MR. ATTORNEY GENERAL. I do not know that it is; but I do not think in the result it will be deemed by your lordships very important to pursue that subject further, because we see the operation of that third clause. It was argued, "This legislation will have a retrospective effect against individuals." It was said, "that we do not intend—we will relieve individuals from a retrospective effect;" and if the clause has, in point of fact, given them an immunity which they would not otherwise have possessed, it applies only to those particular persons; and whatever may have been the reason for that indulgence, which I cannot enter into, it certainly was limited to them.

LORD CHIEF BARON. Did the old law make it a misdemeanor to enlist?

MR. ATTORNEY GENERAL. Yes, my lord. I think that one of the statutes made it more than a misdemeanor; it made it, I believe, a felony.

But, my lords, I was going to observe, that my learned friend felt this difficulty—having endeavored to lay down a principle of interpretation derived from this view of international obligations as applicable to this act, he immediately encounters these five out of the eight clauses, to which he perceives that it is entirely inapplicable—because no person can, with any degree of seriousness, contend that all the things prohibited by these first five clauses were things which could be treated as a breach of international obligation by a neutral government toward a belligerent before the act passed. For example: the language of the act reaches every natural-born subject; wheresoever the enlistment may take place, the words of the act are large enough to reach his case; it is a universal prohibition *ubique terrarum*, even in the territory of foreign nations. Therefore this goes infinitely beyond any obligation which could antecedently have been supposed to be binding on the country enacting the law toward any belligerents. And, my lords, I think it will be found that the latter part of the clause, which relates to something to be done within the realm, does the same; because the latter part of the clause goes on to say, that anybody who, within the realm, "shall hire, retain, engage, or procure, or shall attempt or endeavor to hire, retain, engage, or procure any person or persons whatever," (in each of those two cases it does not signify whether he is a natural-born subject or not,) not only "to enlist" but "to go, or agree to go, or embark from any part of his Majesty's dominions for the purpose or with intent to be so enlisted," shall be guilty of a misdemeanor. Therefore that would reach the case of an officer of the United States in this country who, meeting in this country some of his own countrymen, persuades them to go to the United States, to enlist there in the service of the United States. So anxious was the legislature to protect and fence round by sufficient safeguards the general principles upon which this act was founded, and not to meet the danger by narrow and limited constructions, but to throw a wide net over the whole, that even those cases which seem most remote from the particular occasion are comprehended in these enlistment clauses.

My lords, I was struck also as regards the bearing of this part of the case with my learned friend's argument as to the occasion. He said: "We know upon what occasion this act was passed; there was Sir Gregor McGregor preparing a filibustering expedition in this country, and taking Portobello. There were troops paraded in Regent street and in the streets of London for a foreign service. Was that state of things to be endured?" But are these enlistment clauses to be limited to the parading of troops in Regent street or the streets of London? That might be the particular occasion, but the remedy goes far beyond the particular occasion, and covers a very large space of ground, including the particular occasion, but also including very much more.

LORD CHIEF BARON. I believe that, while in this country, the person to whom you have alluded constituted himself sovereign of the order of the Green Dragon, and made knights grand crosses, and created dukes and marquises without end.

MR. ATTORNEY GENERAL. I recollect that in those debates to which my learned friend has referred, one of the speakers (I am not quite sure whether it was not the first Lord Ripon) speaks of him as a captain whose world was his ship, and whose court was there, and whose army was there, and comprehended everything in it. He seems, no doubt, to have been a very singular personage; but it would be a very singular thing if it should be held that because the strange exploits of that personage were the immediate occasion of the passing of that act, therefore you are to cut it down to the suppression of future Sir Gregor McGregors, and future Green Dragons, and ships of war, which were to be the world to their captains. We know that these were times when there was certainly a very remarkable disposition to enlarge the construction of statutes upon very slender grounds. I think that we have long got out of that habit even with statutes not penal, and I am certainly not asking your lordships to construe a statute which names Sir Gregor McGregor only, as applying to all the rest of the world; but, on the other hand, I must protest against the doctrine that a statute which extends to all the rest of the world, is to be restrained to Sir Gregor McGregor; which is the substance of my learned friend's argument.

Now, my learned friend, Sir Hugh Cairns, said another thing, which I have already noticed, but upon which I must make a further observation, connected with these clauses. He said that these clauses have nothing to do with international obligations. I say that they have quite as much to do with international obligations as the other clauses have; because such things as were done, the levying of troops in England, organizing, drilling, and disciplining them in England, and parading them through the streets of London, with a view to invade the Spanish provinces of South America, were as much acts of proximate hostility as any equipment of ships could be; and, in fact, the case to which I referred your lordships, in Wharton's American Law, of the prosecution of Workman and Kerr for an expedition against Mexico, illustrates that. That was a case in point. Troops do not always require to go by sea. An expedition of soldiers in Canada might be organized and drilled there, and pass over the frontier. It is therefore plain that the injury may be quite as great to the foreign government with regard to men as it can be with reference to ships.

Now, my lords, I wish your lordships to observe one other thing upon the second clause before I leave it; it is an observation which we shall have constantly to repeat in the examination of this statute. The legislature had before them the American statute; they desired to make the British act an instrument of a wider scope, and not subject to the evasions and to the difficulties found in that statute; and even in this second clause we shall observe that fact; because both in the American statute of 1793 and in the American statute of 1818 your lordships will find that the second clause (I take the act of 1818) makes an exception from the enlistment clauses, and expresses it in these words: "that this act shall not be construed to extend to any subject or citizen of any foreign prince," &c., "who shall transiently be within the United States, and shall, on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince," &c., "who is transiently within the United States, to enlist or enter himself to serve such foreign prince," &c., "on board such vessel of war letter of marque, or privateer, if the United States shall then be at peace with such foreign prince," &c. Now, that is an exception which seems very reasonable in its principle, namely, in favor of persons owing a transient allegiance, who by one of their own countrymen, who is also transiently within the United States, may be enlisted to serve in the armies of their own country. I do not think that it is limited to that; but there is no such exception in the English act. We have chosen to be stricter, and have not allowed the thing to be done on any pretence whatever. Of course the penalty against serving *ubique gentium* must be limited to natural-born subjects, because we cannot legislate for other parts of the world. But when you come to the latter part of the clause, no person, whether he be here transiently or permanently, be he a citizen of this or any other country in the world, may engage any other person not only to enlist, but to go abroad from this country for the purpose of enlistment. Nothing can be stronger to show the intention of our government to cut off all the difficulties and means of evasion by words covering every case out of which evasion might rise.

My lords, I now come to the seventh clause of the English act. Now, here, the first thing which I will take the liberty of doing is, to ask your lordships to note (perhaps I may not myself have noticed every one of them) the differences which I have noticed in this and in the other clause relating to ships between the English and the American statutes. In the first place, my lords, we have throughout in the English act the disjunctive for the conjunctive; a change pregnant with purpose and with meaning. Then secondly, whereas in the American statute the word "equip" is not used in any of those portions of the act which define and describe the offense, but only incidentally

comes in for another purpose later in the clause, we have in the English statute that word "equip" used throughout. The American words are these: "If any person shall within the limits of the United States fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the "furnishing, fitting out, or arming;" the word "equip" not being mentioned there. We find that the equipment is afterward mentioned but only incidentally, and for quite a different purpose; it is mentioned just at the end of clause where that is described which is to be forfeited, namely, all "stores" &c., "which may have been procured for the building and equipment thereof." I shall have something to say hereafter upon the word "building," as it occurs there. We thought it right to cover all evasions, and I shall show your lordships in time, that, although for practical purposes it has been necessary in this discussion to rest much upon the differences in the meaning of these words, each of them is officious, and that is not mere redundancy. It was thought fit in the English statute to put in the word "equip." Then the word "furnish" is also put in throughout in the English act, though in the American statute it only comes in as defining what your lordships have sometimes called the offense in the second degree. In the principal offense it is "if any person shall fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed;" but then come the words, "or shall knowingly be concerned in the furnishing, fitting out, or arming;" "furnishing" comes in there in connexion with the "knowingly concerned." We have thought it wise to put in the word "furnishing" in every one of the clauses, as a distinct alternative.

Then, my lords, in the American statute the purpose was expressed simply and solely by the words, "with intent that;" but we, with the object of avoiding, I suppose, some evasion or quibble upon the word "intent," have added the words, "or in order." Those words, "or in order," are put in obviously, as I understand it, to meet such arguments as have been advanced in this case, that builders and other tradesmen are not parties to the intent. At all events they do it "in order that," and for the purpose of avoiding quibbling of that description, the words "in order" have been introduced into this act.

The next difference, my lords, is in the interpolation, rather awkwardly done, of the words "as a transport or store-ship, or with intent." Your lordships know that those words are not in the American act. I think that we can tell, without going to Hansard for information, the history of those words; experience teaches us that words which are ill-adjusted to the grammatical construction of a clause in that way, are probably got in as an amendment in committee; and as a matter of fact, if your lordships search in the proper quarter, you will find that a person not originally friendly to the act was the author of those words. They do no harm; on the contrary, I would rather have them, because they also show that it was meant to cover every evasion. It might have been said: "The act says that we must not prepare ships which are to be used to cruise or commit hostilities, but we may land a whole army from ships which we use as transports." The act covers that. Perhaps it might be said: "No doubt the enlistment clauses will prevent our enlisting that army here; but supposing it can be enlisted in some neighboring country, say France, French ships shall bring the people to the limit of English waters, and our transports will meet them there and no harm will be done." Then there is the expression, "or store-ship." In truth almost every warlike purpose for which a ship can be employed is covered there. A ship to be useful in war, I think, must be either a ship used as a cruiser, or to commit hostilities, or else as a transport or store-ship; they put in those words to cover every possible case, and every possible warlike use.

My lords, I now come to notice the omissions in this clause, and the first which I observe is one which I think does me no harm, though I own that for the mere illustration of my argument I should have been rather glad if it had not been made. I do not think that the fact of its having been made damages my argument the least in the world; but I should have gained an additional argument in the English statute as compared with the American if it had not been made. I mean the omission of some of the words which occur at the end of the clause describing what is to be forfeited. The American clause is this: "And every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited." Now, we will see presently what is the effect of the omission of those words in the English statute, and what is its probable reason. But let me pause for an instant, my lords, to ask your lordships to attend to the light which those words throw upon what the framers of the American act, at all events, understood to be the meaning of the language which they had previously used.

LORD CHIEF BARON. The construction of a British statute should be upon some grounds common to all the British subjects. You can hardly, I think, induce an English court to construe a British criminal law upon grounds which would not be patent to all English subjects.

MR. ATTORNEY GENERAL. Certainly not, my lord, and I should be very much misunderstood if I were supposed to be asking your lordships to do so.

LORD CHIEF BARON. Supposing that without this comparison of the two statutes, the natural meaning of the English statute would be one thing, but that with that comparison those who are familiar with law would infer from the construction of the two acts that the British statute was intended to go further than the act of Congress; if that argument was not patent to all British subjects it would hardly be a legitimate ground of decision here.

MR. ATTORNEY GENERAL. I use no such argument, my lord, and I should have been greatly misunderstood if I were supposed to do so. I am going to argue to your lordships that the plain meaning of the English statute is with me, and I illustrate that argument, as I think I am perfectly entitled to do, by comparing that statute with an act of another country *in pari materia*, which for this purpose we will suppose our legislature never saw, and showing your lordships how it covers cases which are omitted in that other statute; and I shall afterward, I think, show your lordships that if you do not wrest the words and do not tamper with the language—

LORD CHIEF BARON. You are rather arguing to show that the conclusions drawn by Sir Hugh Cairns were not correct.

MR. ATTORNEY GENERAL. Certainly, my lord, as I think I have a perfect right to do. Of course, if your lordships were to tell me that you thought differently I should at once bow; but I think it not otherwise than legitimate and useful to have the means of illustrating the argument which I shall urge upon the mere language of the English act by another act *in pari materia*, which differs from it, though it be not an act of this country. I quite agree, that you must ultimately decline to construe the English act with reference to the American, or to place any construction upon it which its own words do not justify, merely because it differs in some respect from an American statute. No doubt nothing could be more illegitimate than such a mode of construction, except perhaps construing it by speeches made in the House of Commons; but I think your lordships will find that the words are effectual for their purpose, and that this is brought home and point is given to the proof of it by what I say in comparing the one act with the other by way of illustration.

My lords, the observation which I was about to make upon the American statute, I agree, is not an observation which arises upon the English statute at all, which omits the word "building" entirely in its language; but I may, nevertheless, be permitted to make that observation with regard to the American statute as bearing upon this argument, as an illustration of the meaning of the language. The Americans speak the same language as we do; and it is perfectly clear that here you have an example, as good at all events as anything which can be taken out of Webster's Dictionary, or Johnson's Dictionary, of the manner in which the word "fit out" is used, and what it is understood to cover; because here we have persons speaking the language which is expounded in one of the dictionaries which I have mentioned, if there be any difference in the two languages. In one of the statutes, namely, the American, it is expressed that the offense consists in fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned, and so forth. What is to be forfeited? Among other things, "all materials which may have been procured for the building and equipment thereof." It is perfectly plain, therefore, that the words used by the framers of that act, in the language which they spoke in the earlier part of the section, were held to be sufficient to apply to a vessel in course of building, because "materials procured for the building thereof," of course could not apply to a vessel already completely built. It is only an illustration of the use and meaning of language. I shall have more illustrations of that kind to give your lordships from American sources, and, perhaps, some from English sources also; but I think this an illustration not without value.

Now the absence of similar words in our act is not any argument whatever to the contrary, for this plain reason; that by our law, as I apprehend, no materials which have been procured with a view to the use of them in building a ship become a part of or are identified with the ship, until they have been actually in some way appropriated to her. If appropriated, they are covered by the words which we do find in the English statute, "together with all the materials," &c., "which may belong to or be on board of such ship or vessel." If she were in course of building, and supposing the language of the act to be enough to strike a ship in course of building, materials which were appropriated to her, so as, for instance, to vest them in the person to whom the hull, as it was building, belonged, would be materials belonging to the vessel, and would be covered by this forfeiture; and there is no principle or reason why any other materials should be.

Then, my lords, I will observe upon the differences in the next clause, namely, the eighth, before I proceed further in the argument. Now, in the next clause we have these two differences, which I have observed. The American statute, in its fifth section, prohibits the augmentation of the force of a ship of war coming into the United States, *inter alia*, "by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber." In the English act your lordships will observe that the words are "by adding to the number of the guns of such vessel,

or by changing those on board for other guns," saying nothing about their caliber; therefore you have larger words. You are not to limit it by an examination whether the guns are of a larger caliber or not. Then, lastly, the words following in that clause of the American statute are, "or by the addition thereto of any equipment solely applicable to war." It has been preferred in the English statute to use the more general expression "or by the addition of any equipment for war," so as to avoid the quibble as to whether it was solely applicable to war, or might be applied also to other things.

Your lordships recollect that Sir Hugh Cairns laid a good deal of stress upon the tenth and eleventh sections of the American statute, which relate to bonds which may be required under certain circumstances, and to the power of the President to detain ships. My lords, the tenth section deals with the case of an armed vessel, belonging wholly or in part to citizens of the United States. That is not in our act at all, and I cannot perceive how its absence from that act, or its presence in the American act, can effect me prejudicially. That was a provision applicable to a particular class of ships, which in the American statute, I apprehend, would not at all cut down or limit the previous clauses. Then the eleventh clause says "that the collectors of the customs be, and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart," under certain circumstances. Now that is important, because it shows most distinctly that a vessel which is not provided with equipments exclusively applicable to war, provided she be manifestly built for warlike purposes, a vessel which, though not armed, has a cargo consisting of arms and ammunition, is within the purview of the act, and is to be detained until certain security is given. That provision is not in our act either. I do not myself think that it much affects the question one way or the other; but as far as its bearing goes upon the construction of the American act, I do not think that it is that which my learned friend has attributed to it.

My lords, we now come to what I believe to be the ultimate point, namely, the proper meaning of the words which we have got. Now I take it first entirely upon the words as they stand, without reference to any other statute of this or any other country, and without reference at present to any authorities which may have been decided in any other country upon any act *in pari materia*. My lords, with regard first of all to these four words, I think that I can show that each of those words has a sense sufficiently different from the other to explain why the legislature considered it expedient to put every one of them in under the disjunctive copula. Take the word "equip" for example. I very much agree with what was said by my learned friend, Mr. Mellish, whose argument appeared to me to have only one fault, namely, extreme brevity. I should have been very glad if it had been longer; but I very much agree with what he said about that word, namely, that it is a perfectly flexible term, covering very widely whatever is done, for the purpose of preparing a ship for the service which she is to perform. I do not agree that if it is not an equipment solely applicable to that purpose, it therefore is not an equipment for that purpose; but as to its largeness and signification I do agree with him; and there is one thing which may be covered by and included in the word "equip," which we cannot find to be covered by any other word here; I mean the crew, the manning. Your lordships know, that in the French language the crew of such a vessel is called "*equipage*," and there can be no doubt that the word "fit out" will not include the crew. Upon that point I may mention what I find in Lord Tenterden's book upon shipping, where the fitting out and manning are distinguished; it is a passage in the eighth edition, page 134: "As the master in general appears to all the world the agent of the owners in matters relating to the usual employment of the ship, so does he also in matters relating to the means of employing the ship, the business of fitting out and victualling and manning the ship being left wholly to his management in places where the owners do not reside." There he distinguishes, and I think with accuracy, fitting out, victualling, and manning.

I think, also, my lords (though I am not about to detain you by going into any proof of it,) that if your lordships should think it worth while to make a careful examination of Mr. Justice Story's judgment in the case of the *Santissima Trinidad*, you will there find traces of his honor having considered that the equipment of the crew was within the meaning of the American statute; but I will not lay stress upon that, because it is possible, that in the places where he uses the word "equipment" it may not be intended to be used with that object.

My lords, I have mentioned one extremity of what the word "equip" may cover. I will now mention a subject which lies at the other extremity. Take the rigging, for example—there is an example to which I will refer your lordships without dwelling upon it in the case of *Frost vs. Oliver*, which was tried before Lord Campbell, and which is reported in 2d Queen's Bench Reports, pages 304 and 305, in which the rigging—rope supplied for the running of the ship—is the subject, and Lord Campbell over and over again speaks of it as necessary for the equipment of the ship. So that we have those two things, so to say, at the two extremities of the term "equipment." We have manning, a thing most remote from the "furniture," and we have rigging,

which, it may be, belongs to the category of "furniture." What else is covered by the word I will not at present say, because I shall have some authorities to refer to as bearing upon that subject; but I venture to say, in order to let your lordships know what you have to expect from me upon that point, that I demur to the proposition that "equipment" is an expression which comprehends nothing connected with the structure. I should be prepared to contend, and without much fear that your lordships would not go with me, that many things connected with and entering into the structure of a vessel are properly within the term "equipment." For instance, in the case before you, I should certainly contend that those bulwarks which we have heard of, independently of the machinery and other things, were so. And, my lords, I should say, that if we were dealing with one of those cases, which, if I did not misunderstand my learned friend Mr. Mellish's argument, he would be prepared to contend are outside the act, I mean those cases of what are called steam rams and cupola ships and iron-plated vessels, I should submit that although those things may in some sense be builder's work, and although they enter into the structure of the ship, yet if those things are not "equipment," I believe all persons who have hitherto used that word under similar circumstances have used it wrongly. However, for the present, I pass over "equipment," to return to it hereafter with the aid of authority. Perhaps before I entirely pass over it, I may mention that in the very excellent little publication which I mentioned yesterday, and not without your lordships' approbation, I see that the derivation of the word "equip" is suggested from the German or High Dutch, *schip* or *schiff* as connected with the ship. I confess that I think the derivation of the word is a little obscure. At first sight people might think it connected with *ephraippia* or *equus*. I think that Mr. Gibbs's derivation may be as likely to be right as not, but I lay no stress upon it.

I pass to the word "fit out." Now the word "fit out" I think is *nomen generalissimum*, and is applicable to describe the whole operation from beginning to end; and if the case required it, I should not shrink from saying that, provided you had got the necessary evidence of intent, which, under those circumstances, of course would not be easy or obvious, every single act done, as has been said, from laying the first plank for the keel to the completion of the vessel in a state fit to go to sea, is legitimately covered by the term "fit out." If the whole thing is done for a particular purpose as one act, I say that every single part of it is only a step in progress to complete the whole. My lords, in illustration of that, and bearing in mind that my argument by no means requires me to go to that extent, I will put this case—

LORD CHIEF BARON. Mr. Attorney General, the present interruption arises from the necessity of providing for the business of to-morrow here. I presume that there is no probability of all the counsel on the part of the Crown concluding to-day.

MR. ATTORNEY GENERAL. I am afraid not, my lord.

LORD CHIEF BARON. I should imagine not; we cannot expect it.

MR. ATTORNEY GENERAL. I shall conclude to-day, no doubt, but my learned friends cannot be expected to do so.

LORD CHIEF BARON. Two members of the court, one of them being Mr. Baron Bramwell, must attend at the court of criminal appeal, which sitting, as you of course know, in respect of cases which require immediate determination, could scarcely be postponed even for so important a matter as the present. Would it, therefore, be inconvenient if the court adjourned the hearing of this matter from to-day till Monday?

MR. ATTORNEY GENERAL. To me it would certainly not be so, my lord.

MR. BARON BRAMWELL. I should hope that one of the other courts would find a substitute for myself, and then unless it is inconvenient to you, we could let this argument go on to-morrow. What it struck me it was desirable to know was whether it would suit you and those who are with you to proceed to-morrow.

MR. ATTORNEY GENERAL. My lord, the solicitor general says that it would suit him to proceed to-morrow. As far as I am concerned, I must look to your lordship's own convenience, because I hope that I shall certainly conclude to-day.

MR. SOLICITOR GENERAL. Will your lordships allow me to say a word with reference to what Mr. Baron Bramwell has said. I should be very glad to go on to-morrow if it were convenient to the court.

LORD CHIEF BARON. It is difficult to imagine a case more important than the present one; and which for the interest of every one requires as early a decision as is consistent with the importance of the case; therefore we ought not to lose a day, but where the liberty of the subject is concerned, which is the case with respect to the court of criminal appeal, it has been usual, and I think most proper, to consider that the liberty of the subject is a matter of the first importance in this country. We have sent to inquire, and I think that it would be sufficient, if we could get the assistance of any judge from either of the other courts. I have no doubt that we shall be able to obtain it, and it so, we will go on with the case to-morrow.

MR. ATTORNEY GENERAL. My lord, I was going to illustrate what I said upon the word "fit out," which I say is *nomen generalissimum* capable of comprehending every individual act, provided it be all in pursuance of one intention to make a complete

thing, or merely to create and to bring into existence a ship ready to take the sea, which I apprehend is the idea, which is aimed at in all these passages. I say that the word "fit out" comprehends every single act connected with the operation tending to that result, from the laying down of the keel to the end. It is not at all necessary for my argument in this case that your lordships should agree with me in that, but at the same time I should not shrink in a proper case from urging that, and I will put this supposition to illustrate this argument. Supposing that I come into court, having seized a vessel in the very earliest stage of its progress, when it was a mere hull, certain planks put together, but with evidence of an indubitable character, that it was done under a contract which is produced and proved to the court, that the persons doing it would build and completely equip and arm that ship, (or I may omit, and will omit the word "arm.") for a particular service, namely, that she should be employed in the service of the United States, the Confederate States, or any other such belligerent government, to cruise and commit hostilities. Every single step *ab initio* would be a step toward the completion of that design. My lords, I believe that I should be perfectly warranted in that view. There are certainly (I do not require the aid of them) some strong authorities at common law, which I will just mention to your lordships without dwelling upon them, and I rather abstain from doing so, because I observe that some of them are collected in an able note of Mr. Finlason in his report of this very case of the Attorney General *vs.* Sillem in his *notis prius* reports. There is the case of Langton *vs.* Hughes, in 1st Maule and Selwyn, page 593, which has been frequently since referred to as a case of high authority, where, it being rendered illegal by act of Parliament for a brewer to use anything but malt and hops in the brewing of beer, it was held that a druggist who "sold and delivered drugs to the defendant, a brewer, knowing that they were to be used in the brewery," was guilty of an illegal act, and "could not recover the price of them." The language of Lord Ellenborough is very strong, in which he says, at pages 595 and 596, "The object of the legislature in passing the 42d of George III was to protect the public health and the public revenue. The health which might be impaired by mixing with beer ingredients of a noxious and unwholesome nature, and by trying experiments with the liquors, and a large and important branch of the revenue by providing that beer should be a liquor compounded of malt and hops only, and not of adulterated materials. There is a distinct prohibition in the act against causing or procuring to be mixed any ingredient except malt and hops; and a person who sells drugs with a knowledge that they are meant to be mixed, may be said to cause or procure *quantum in illo* the drugs to be mixed." ▲

LORD CHIEF BARON. I should have thought that any person selling an article to be used in the commission of a crime, for the purpose of its being so used, and with the knowledge that it was to be so used, would be an accessory before the fact.

MR. ATTORNEY GENERAL. I have no doubt that would be your lordship's view.

MR. BARON BRAMWELL. It is extremely difficult. If a gun-smith makes a pair of duelling pistols, what then?

MR. ATTORNEY GENERAL. I take it that it would be a question of fact in the particular case, and I quite admit that to attempt to bring home an offense of that kind might be a matter of difficulty.

LORD CHIEF BARON. But suppose that a gun-maker sold a pistol, being told that it was to be used for the assassination of a particular person?

MR. ATTORNEY GENERAL. That is a fair illustration. Supposing that he received a note from a man stating, "I am going to fight a duel to-morrow, I want a pistol; will you have the goodness to send me one and you shall be paid for it;" in that case I think the gun-maker would have a very considerable chance of being convicted upon an indictment.

LORD CHIEF BARON. There might be some difficulty if he did not know what was the specific offense; as for instance, suppose that a man sold an article useful for house-breaking, and that the person who bought it committed the offense of burglary, if the tool-maker knew nothing about where, when, or how the thing was to be done, but only knew of it generally, probably he could not recover the price if he were to sue for it, but I very much doubt whether he could be made an accessory before the fact in a particular crime afterward committed. But if he were told "I want to commit a burglary at No. 3, in such a place," and he furnished the article, and the burglary were then committed, I think that he would be an accessory before the fact.

MR. ATTORNEY GENERAL. I think that what your lordship says is perfectly accurate, and I will not dwell upon further illustrations of that description. As it strikes me, the word "fit out" is perfectly large enough to comprehend the entire operation from its commencement to the end, and if that operation requires the creation of a ship as well as the adding of rigging, machinery, spars, and stores for the prohibited purpose, every single act done, from the laying down of the first plank in the keel, provided always that you are in a situation to prove that it is in order to do the thing prohibited, is equally within the prohibition. It is an "attempt" or an "endeavor"—it is an "aiding" and so on; as to which words I entirely subscribe to what has fallen from the court more than once; that, of course, those words which describe the "attempt"

or "endeavor" can apply only to that which would have been done if not stopped and intercepted.

LORD CHIEF BARON. The question remains—what is the thing which is prohibited?

MR. ATTORNEY GENERAL. I know that it does, my lord, and in order to illustrate what is meant by this "fitting out," I apprehend that it would be perfectly clear that any single act done for the purpose of producing a ship capable of taking the sea and fitted out to take the sea with this prohibited intent, would be an act struck at, in however early a stage of the operation it might take place—and the word "fit out" as it appears to me, comprehends every part of the operation as much as the whole.

I pass over the words "or arm," because they require no comment. Your lordships' minds are quite sufficiently addressed already to the point, that they are in the disjunctive.

Then the "attempt" or "endeavor" we agree is that which would be completed if it were not stopped, as, for example, in the present case it is quite clear, unless I misunderstand the conclusions which the human mind ought to draw from facts and evidence, that this ship the *Alexandra* was being proceeded with, with a view to complete and prepare her in such a state that she might take the sea at all events, whatever might be the particular equipment and furniture upon her at that time, that she might be a ship prepared and ready to go to sea as a fully equipped ship for that purpose. That that was meant to be done within this country is an inference which is irresistible, as I understand it from the undisputed evidence in the case. It was only not done because the government seized the vessel, but there was an attempt and endeavor to do it at all events.

Then as to "aiding, assisting, or being concerned in the equipping," I quite agree that something which falls within the definition of the principle offense must be done or attempted to be done in this country for any one to aid or assist. At the same time, while admitting that, I can readily present to my mind many cases, in which those words would reach an act which was meant to be done partly here and partly elsewhere: because I apprehend that the prohibition to "equip, furnish, fit out, or arm," covers all arming, all equipping, all furnishing, and all fitting out, and that the mere fact that it is meant to be done half here and half elsewhere does not in the least degree render it lawful. Let me illustrate that also by a case—Suppose that Canada were in insurrection, as once unfortunately it was, against the authority of this country, we know that some of the lakes and some of the rivers of North America divide by a very short interval the American frontier from the Canadian. Can one suppose that an act like this in the United States would not have been violated if there was a scheme of this description—two dockyards, one on one side of the river St. Lawrence, and the other on the other side, and if a ship were to be built and fitted out to a certain extent upon one side and then sent over and completed upon the other? It seems to me perfectly clear that that would be equipping, furnishing, and fitting out within the meaning of this act; although there may not have been all the equipments nor all the furnishings, nor all the fittings, which were meant at one time or another to be applied to the ship.

Now, my lords, I have not yet observed upon the word "furnishing," which I did not mean to omit. Not much need be said upon it; but it is important to observe that while "fitting out" will include everything, and while "equipment will include "man-ning," which none of the other words reach, "furnishing," on the other hand, will apply to the smallest thing. "Furnishing" does not mean the whole, but every article of furniture, everything done in the way of furnishing is directly within the terms of the act. So that this word, which is the smallest of all, is added in order to avoid the possibility of the cavil, that the other words are so large as to include everything. "Equipping" is put in, in order to cover "manning" and perhaps for other reasons also; and "fitting out" is put in in order to make it large enough to include all; and "arming" covers another thing.

Now, my lords, (and this is the next point which is important,) I want to know what is the ground upon which you are to qualify those words otherwise than we find them qualified in the clause?

Here we come to the main issue between me and my learned friends. I say that they interpolate words into the clause. They insist that it is not to be read in its plain and natural meaning. They want your lordships to introduce upon these general words qualifications which the legislature has not introduced; and with what object, and what effect? Why, advancing the mischief and suppressing the remedy. Now, I quite agree that in the construction of a penal act, if you do not find words which reach the case, you are not to put them in; but if you do find words which reach the case, are you to strike them out? that is the question. If these words are not used by the legislature with the limitations which my learned friend contends for, but are used without those limitations, and in a totally different way, what business have you to tamper with the words? What business have you to interpolate other words, or to twist and alter the collocation of the sentences? And to what end? To take out of the operation of the act cases which, according to the natural meaning of

the words, are within it, in order, as I have said, to advance the mischief and suppress the remedy. That, of course, your lordships will not do.

Now, let us see what the words are: I have observed upon "equipping," and so on, and will not observe further upon it. But what is the qualification? This: "Shall equip, or attempt, or aid with intent or in order that such vessel shall be employed in the service of any foreign prince with intent to cruise or commit hostilities." I pass over the interval. Now, my lords, observe what my learned friends want you to do—to take those words "to cruise or commit hostilities" from the subject to which they are applied in the clause, and to apply them to a totally different subject. They are applied in the clause to the employment of the ship; they are not applied as qualifications of the equipment. The words which Sir Hugh Cairns puts in are not there; it does not say "to equip as a ship of war;" it does not say "to equip with an exclusively or distinctively warlike equipment;" it says, "to equip, furnish, or fit out, or attempt to equip, furnish, or fit out with intent or in order that such ship or vessel shall be employed in the service of any foreign prince to cruise;" and that is the only question of fact to be inquired into. If you prove, as a matter of fact, that the ship or vessel is intended to be employed in the service of a foreign prince to cruise or commit hostilities, have you not proved the whole case? It appears to me quite clear that you have, because the ship cannot possibly take the sea without having equipments, without having furniture, without being fitted out. We have proved that she is meant to be completed with the fittings necessary to take the sea within the realm. That is all which the word "equip" necessarily means, that is all that the word "furnish" necessarily means, that is all that the word "fit out" necessarily means; and then I assume that you have proved the rest, namely, that it is with intent or in order that the ship or vessel shall be employed (not the equipments) in the service of a foreign prince with intent to cruise or commit hostilities. Now, as a matter of fact, we conceive that we have proved that—we conceive that we have proved that this ship is brought into existence and is to take the sea in order that she shall be employed to cruise or commit hostilities. Does the act say that she must be in a condition to cruise or commit hostilities at the moment when she takes the sea? Does the act say that nothing shall be necessary to be done to her by the foreign prince who is to employ her? Not a word of it. I have shown your lordships already that the mischief of the act will not be suppressed if you introduce such limitations, and the legislature has not introduced them—they are not found here. The legislature could not be ignorant of these evasions for which my learned friend contends. I quite agree that if the statute has not prohibited it, they have a right to go outside the statute. But the legislature has defined the offense by words which omit to qualify the words "equip" and "furnish" by reference to any particular kind of equipment, or any particular kind of furniture; and the only qualification is that it must be done with intent or in order that the ship shall be employed in the service of a prince who means to make a particular use of her—to cruise or commit hostilities, or to use her as a transport or store-ship. To say that it was necessary that she should be in a condition to do that the moment she passed the boundary line when the legislature has not said so, and when the effect of holding it is to stultify the legislation, and to enable, by the easiest possible tricks and devices, the real mischief to take place, is not certainly the province of any court in construing an act, and I find no words here which in any sense require or justify such a construction.

MR. BARON CHANNELL. I understand your argument upon the seventh section to be this: You read the section, equip and so on—"in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people," "with intent to cruise or commit hostilities;" leaving out for this purpose "as a transport or store-ship."

MR. ATTORNEY GENERAL. I do. I may observe upon those second words, "with intent," which no doubt are awkwardly introduced, we are all substantially agreed that the sense is just the same as if those words really were not there, for two reasons. First of all, the words which follow must be words of qualification applicable to "transport or store-ship" as well as to "cruise or commit hostilities," otherwise there would be this absurdity, that furnishing a ship for the purpose of being used as a transport or store-ship, not to be used for belligerent purposes, would be rendered illegal. But that is not all. Your lordships will find a conclusive proof that the legislature so used the words; for a little lower down, when you come to that part which relates to commissions, the words are: "or shall within the United Kingdom or any of his Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to his Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid;" it is clear, that must apply both to the case of a "transport or store-ship," and to "cruising and committing hostilities;" the employment governs both.

MR. BARON BRAMWELL. I understand you to put it thus—No doubt there must be

some equipment, or furnishing, or fitting out, or arming; there must also be the intent of the vessel to cruise and commit hostilities.

Mr. ATTORNEY GENERAL. I beg your lordship's pardon; with the intent that it should be employed in the service of a foreign prince?

Mr. BARON BRAMWELL. Yes, I do not refer to those words now. Do you say: Suppose that any man were so foolish as to fit out his vessel in the most peaceable way, so as to be utterly incapable of committing hostilities or cruising; nevertheless, if he had the intent that she should do so, that would be a fitting out within the act, and an intent within the act, and would suffice?

Mr. ATTORNEY GENERAL. My answer would be, We have not yet come to the question whose intent you must have.

Mr. BARON BRAMWELL. I wish to correct myself there again. Suppose the intent existed in the requisite mind, and there was an equipment, however ill calculated to carry the intent into execution, do you say that is within the statute, inasmuch as there is the equipment and also the intent?

Mr. ATTORNEY GENERAL. I should not in the least shrink from answering that in the affirmative, though in doing so I should wish to accompany it with this: clearly that is a matter of evidence which would be extremely important. I mean when you come to the question whether this was the prohibited intent, the circumstance of the fitting being totally unsuitable would be very material.

Mr. BARON BRAMWELL. I was about to put to you, supposing such an extreme interpretation of the statute as I have suggested were the correct one, when you came to deal with the question of fact before the jury you might say: If you have the man before you confessing this folly you must find against him.

Mr. ATTORNEY GENERAL. I will take up the illustration your lordship has suggested, and make one or two further remarks upon it. Suppose this case, that in letters put in, in evidence between the agent of the belligerent and the ship-builder, the foreign belligerent said this: "The circumstances of this war are such that I can turn to account against the merchandise of my enemy's subjects an ordinary merchant ship with great ease; if you supply me with the ship I intend to employ for that purpose, I will take care that such equipments are put on board her that she shall be able to deal with unarmed vessels on the sea, to destroy them and cruise against them; I do not want you to make her a strong ship; I do not want you to give her any of the peculiar fittings which are usually required for warlike purposes; I can make her available in this war, with the appliances I can put on board her, to cruise and commit hostilities, though she may be of the common mercantile construction." I say that that would be within the act.

Mr. BARON BRAMWELL. I put a question to one of the counsel on the other side which he did not answer, and which seems to me to arise now, which is this: Supposing the cruising intent were what you may call not the immediate intent, the immediate intent of the equipment being to enable her to sail to a place where she would get arms, but that the further intent was that when she got there she should be so further equipped, or manned, or what not, that she should be in a condition to cruise and commence hostilities.

Mr. ATTORNEY GENERAL. I say it is perfectly clear that that case is within the act. I say the act strikes the thing, and if you say it does not, you are construing the act away; you are doing that which the learned judge in America said you are not to do, namely, frittering away the plain language of the act of Parliament, in order to advance the mischief and to cut down the remedy. I say that the case your lordship puts is struck by the act according to the plain and natural meaning of its words. The argument of the other side requires you to tamper with them. I do not want you to introduce words, I do not want you to wrest the sense, but to abide by it, and to abstain from doing that which it is the duty of a court not to do, namely, legislating here, and legislating against the express intent of the legislature. I will pursue my illustration further. There are powers perhaps so little advanced in warlike affairs, that, as against them, a kind of ship may be perfectly serviceable to cruise and commit hostilities, which would not be serviceable as against more civilized and advanced powers. Take the case of China. Her Majesty has been pleased not to observe a strict neutrality in the present differences between the Emperor of China and some of his subjects, and has given license to some of her subjects to aid the Emperor of China; but her Majesty might have been pleased to issue a proclamation enjoining strict neutrality. Very possibly a simple description of vessels would have been perfectly serviceable for such a war, common ships, such as require no fittings specially adapted for warlike purposes, might have been employed; but would that have been legal under this statute? Would the degree of civilization and advancement in the arts of warfare which the particular belligerent might have attained be the criterion by which to determine this particular fact, whether a particular ship had been equipped with intent or in order to be employed in the service of the Emperor of China against his belligerent subjects? I apprehend it would be absurd to say so, and any construction to that effect is legislation, not interpretation, and legislation of a most vicious kind in a matter upon which the peace

and welfare of the kingdom, perhaps of the world, is declared by the legislature to depend.

LORD CHIEF BARON. We can hardly act upon anything but what is the plain meaning of the statute, that is all we have to deal with; as to the peace of the world or the interests of the community we cannot take much notice of that, though we should be sorry to have to be insensible to such considerations. The only question we have to deal with is what is the meaning of the act. We are bound to give the true meaning to the act, and that sort of appeal to the peace of the world cannot weigh much with us.

MR. ATTORNEY GENERAL. The act of Parliament has appealed to it. I was reminding your lordships that it was the object and policy of the act to preserve the peace and welfare of the kingdom; perhaps I was going too far in saying the peace of the world; it is enough for me to speak of the peace and welfare of this kingdom. I say, your lordships are not to wrest those words from their natural and ordinary and obvious meaning, so as to take the offense properly described by them out of them, upon any assumed general notions of the objects of this act. I point out to you from the act itself, that its object is to suppress practices which the common law was insufficient effectually to suppress, which the legislature, according to the preamble of the act, thought had a tendency to disturb the peace and welfare of the kingdom; and if there is any policy which it would be your lordship's duty not to frustrate by forced and strained interpretation, surely it is such a policy as that. Now, my lords, I go further, and I say that there is upon the face of this clause (if my learned friend, Mr. Mellish's argument, which seems to be directly against the words of it, be not right) proof that the notion entertained on the other side is not correct; because their notion is, in substance, that the ship must be fit to commit acts of war when she takes the sea and passes the boundary line of the neutral territory; otherwise it is clear you are not doing what they call a proximate act of war in sending her out. But how can she be in that state without arms? It is not necessary that she should be armed; it is clearly not necessary within the meaning of this statute that she should be in a condition to commit hostilities as soon as she crosses the boundary—she cannot commit hostilities until she gets her arms. And no doubt, if the interpretation which we imagined the Lord Chief Baron to have adopted at the trial were right, for which Mr. Mellish, I suppose, must be considered to contend, that all those words mean the same thing; that "arm" is implied in "furnish," that "arm" is implied in "equip," and that "arm" is implied in "fit out," (we misunderstood my lord, I know now;) of course then I could well follow the argument to its conclusion; but I say that is not the language of the legislature, and we have no right to foist into the language which the legislature has used, which does not signify arming, and which is used in the disjunctive, an interpretation which imposes upon the words the sense of arming, unless you find something in some other part of the act which unequivocally and beyond doubt obliges you to do so.

I take the liberty of saying, with regard to this subject, that the character of the structure and the purpose for which the ship is built may itself determine the character of the equipment. I cannot but observe here upon some of the consequences involved in the argument on the other side, that you are to separate the structure from the equipment, and to require in the equipment as separate from the structure something distinctively and particularly warlike; that argument goes this length; that if you find the structure to be unequivocally warlike—warlike beyond the possibility of doubt—though it be perfectly clear that the ship is built for a warlike purpose, and also that she is built with intent or in order to be employed in the service of a foreign prince; yet, being so built with that intent, unless the equipments also be distinctively warlike, when the structure is proved to be so, and the intent is so, yet forsooth she is not within the act. Is not that legislation? Is that interpretation? There is not a word to qualify the words "furnish" and "fit out." I have assumed the case that the ship as to structure is proved to be a man-of-war, the purpose of which is warlike—it is equipped—not armed—that clearly is not necessary; and there is nothing whatever left undone but to put its arms on board; and yet you are asked to say, what the legislature has not said, that the equipment, as distinct from the structure, and distinct from the purpose of the ship, must be essentially a warlike equipment. I take the liberty of asserting, that you cannot do so.

MR. BARON BRAMWELL. Is that so clear? One has in one's mind (of course there is no disguising it) the case of a steam ram; the ram may be said to be part of the vessel itself.

MR. ATTORNEY GENERAL. No doubt it would be argued to be so.

MR. BARON BRAMWELL. Is not she an armed vessel?

MR. ATTORNEY GENERAL. I should think so. Your lordships will not suppose that I would not contend that she was an armed vessel; I should do so.

MR. BARON BRAMWELL. I understand your argument to be that a vessel built in a condition to commit hostilities, nevertheless might not be armed within the act.

MR. ATTORNEY GENERAL. Of course your lordship puts the case of a particular vessel,

as to which I certainly should contend that she was armed; but I can put the case of other kinds of vessels, as to which it might be more difficult to contend that the vessel was armed, though it might be perfectly clear that she was a man-of-war. Your lordships have heard a good deal in the course of the argument about the *Alabama*. A document was referred to as containing for the purpose of the argument an account of that transaction, in which it was stated that from the beginning it was reported, and there was no doubt whatever, that she was a man-of-war, that is, her whole build and structure were unequivocally those of a man-of-war; there was no question that she was intended for that, and for no other purpose; still there were no arms, there was no ram, there was no cupola, nor even armor-plating, (as to which, if there were armor-plating, I should also contend perhaps that she was armed; it might or might not be the opinion of the court that armor-plating would come within that definition.) But cases are easily put. I have put one in which the ship beyond all possibility of doubt was a man-of-war. But it is contended that the structure is to be separated from the equipment, and however you prove that the structure and purpose were exclusively warlike, yet if your masts, rigging, and machinery are such as may be put on a peaceful vessel, if they are *ancipitis unus*, it is argued that it is not equipment and furnishing of a vessel "in order that such ship or vessel shall be employed in the service of a foreign prince, to cruise or commit hostilities."

MR. BARON BRAMWELL. I take it the argument of the other side goes to this extent. If there were an undeniable vessel of war built fit neither for purposes of commerce, nor for pleasure, and she were sent out with ordinary masts and rigging, with no crew sufficient to man her, with no arms, no guns, and no ammunition, so that it would be defenseless if attacked by any vessel of war, I take it that the argument of the other side is, that that would not be an equipping, fitting out, or furnishing within the act of Parliament.

MR. ATTORNEY GENERAL. So I understand.

LORD CHIEF BARON. That is what they say. On the other hand you say, if a mere merchant ship in every respect is built and sent out with a knowledge of its afterward being intended to be converted into a vessel of war it would be within the act.

MR. ATTORNEY GENERAL. No, my lord, I do not argue that.

LORD CHIEF BARON. Afterward intended to be converted into a vessel of war, being now a mere merchant ship?

MR. ATTORNEY GENERAL. No, my lord, those are assumptions which I do not adopt into my argument at all. I do not shrink from this case; a ship is ordered to be built directly and immediately for a fixed purpose of war, but it is ordered to be built in the manner of a mere merchant ship which is not a vessel of war; there is no intention that something else shall happen somewhere or other, changing its character into a ship of war; it is intended to be now constructed, built, and equipped in the manner of a merchant ship, but not to be used as a merchant ship, but with the fixed, definite, and determined purpose of war. I do not shrink from that case in the least. I say, if that case were proved as a matter of fact, it would be within the act. It is not very probable that a ship, in itself exclusively applicable to the purposes of a merchant ship according to the custom of European nations, could really be constructed with that intent.

LORD CHIEF BARON. It might be used as a transport.

MR. ATTORNEY GENERAL. Yes, as a transport no doubt it might, or as a store-ship.

LORD CHIEF BARON. There was once a proposal made to turn all the tugs into transports.

MR. ATTORNEY GENERAL. I am much obliged to your lordships for that exceedingly useful observation, because it reminds me of that which possibly I might have passed over, namely, the bearing of those words "transport or store-ship" upon the rest of my argument. It is perfectly clear that this notion of what I may call a special and differential equipment cannot be applicable to a transport or store-ship, in the same sense as to a cruiser intended to commit hostilities. Is it meant to be said that no equipment will do, though the ship be intended to be used as a transport or store-ship, which is not exclusively applicable to a transport or store-ship? It would be difficult to point out equipments exclusively applicable to transports or store-ships.

MR. BARON BRAMWELL. I did not say "exclusively" applicable.

LORD CHIEF BARON. There are very few merchant ships that might not be used as transports.

MR. ATTORNEY GENERAL. In all probability. It is quite clear that the equipping, fitting out, and furnishing, in order that the ship might be employed as a transport or store-ship in the foreign service, is struck at in the act. Mr. Baron Bramwell observed upon the word "exclusively," but the argument requires the word "exclusively" or distinctively, (which is the same thing;) because all those fittings are applicable; it is only that they are not exclusively applicable; they are necessary in order to enable her to do her work; they are fittings out to enable the ship to take the sea for the service for which she is destined; and if arms are not necessary, (and it is plain that the act does not require that she should be in a position to commit immediate hostilities,)

what difference can it make that besides the arms there may be some additional equipments which require to be furnished before she can commit hostilities? I apprehend none at all. She is furnished and fitted out with the intent and for the purpose that she, the ship or vessel, shall be employed to cruise or commit hostilities. The mere circumstance that the person who employs her is to do something afterward to make her fit for the employment besides the arming, it being clear that the arms are to be added afterward, can make no difference.

Though it is not an observation to which, perhaps, much weight is due, I do not like to omit it. Permit me to ask you to compare the language in that part of the seventh section with the corresponding language of the second section. I think you will find, as in the seventh the main purpose of the employment is the material thing, so it is in the second, which deals with the case of a person enlisting or entering himself to enlist or agreeing to enlist "to serve as a sailor, or sail in or to be employed or engaged, or to serve in or on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used for any warlike purpose." The words "intended to be used," which are separated by the disjunctive from "fitted out" and "equipped," there correspond with the words, "with the intent that such ship or vessel shall be employed," in the section which we have under consideration. The legislature knew perfectly well that ships which had not a special and differential equipment might be, nevertheless, most useful for such an employment, and that the object they were striking at might easily be accomplished if they permitted such an evasion; and therefore they have not permitted it.

I say, where you have as a matter of fact the purpose and the intent of the employment of the ship proved, that determines the character of the entire equipment and of all the furniture, and all the fitting out from beginning to end. I will illustrate that, my lords, by reminding you of a case which I mentioned for another purpose earlier in the argument yesterday—I mean the case of the ship *Richmond*, before Lord Stowell, in 5th Robinson. It may be in your lordships' recollection that that ship was condemned as contraband of war, because she was intended to be sold to the belligerent power. It is quite settled that the sale of a mere vessel of peace to a belligerent is not contraband; she must have been affected with a warlike character or purpose in order to make her so. The *Richmond* was at the time a merchant vessel, and had been actually employed as one, but, in the language of Lord Stowell, she was easily convertible into a man-of-war, and, in his judgment, intended to be sold with a view to be so used. She was therefore contraband and condemned, though her original character (had there been nothing to show that it was to be made subsidiary to warlike purposes) would not in itself have entitled her to be condemned.

Now, my lords, it must of course always be borne in mind, that in a case where the matter of fact is controverted, the character of the equipments may be extremely important evidence of the intent and purpose; but I am assuming a case where you have the intent and purpose demonstrated *aliunde*. The distinctive warlike character of the equipment may by itself determine the purpose, not perhaps that it is meant to be employed in the service of this or that power, but that it is meant for war. The distinctive warlike character where you have it, is evidence of the character of the entire equipment from beginning to end. I must remind you that I am not driven in this particular case to rely, sound as I believe it to be, upon the argument I have been offering as to the full extent of the meaning of those words, "equip" and "furnish;" for we are dealing with a ship as to which this is in proof, not merely that she is a ship of which the build and the fittings are *ancipitis usus* in that sense that nobody could say they were not equally applicable to purposes of war and peace, but the evidence proves them to be more properly adapted for purposes of war, and to be such that a skilled person, looking at them, would say, "This vessel is fitted out for war and not for peace." The evidence was that she could not be used for mercantile purposes, though she might possibly be used as a yacht; but it obviously was the judgment of the witnesses that, from the build and the fittings, she was not intended to be so used. You have it proved in the first place that there were bulwarks of peculiar strength, as to which the evidence goes to the length of saying that they were exclusively fit for purposes of war; because the evidence is this, that, if not for purposes of war, if not to resist shot, they would be an incumbrance and an inconvenient weight, and that they were, in a special sense, intended and adapted for the purpose of war. We have the proof that this ship is built as a gunboat coming from the very claimants themselves, from their foreman, Mr. Spiers; we have it proved by the admission of the builder himself that she was intended for and built as a gunboat for the service of the Confederate States, under the orders of their agents. It is quite clear that the ship, being built as a gunboat, has the equipments and fittings of a gunboat, to this extent, at all events, that the bulwarks are adapted for that and no other purpose; so that it is not a case of fittings simply *ancipitis usus*, but of fittings specially adapted for warlike purposes; as to which the most that could be said is this, that they might also by possibility be used for one particular, though a most improbable, peaceful purpose. Can you say, under such a state of circumstances as that, if under any circumstances

this argument is to be allowed, that the mere possibility that fittings and equipments that are peculiarly and specially adapted for the purposes of war may be applied to peaceful purposes, (the same remark applies to hammock nettings attached to the bulwarks, which might be used for peaceful purposes, though the purpose and intent is proved,) is a reason why you should say there is no equipment within the meaning of the act? My lords, I say that I might upon that evidence even go further, but I do not think it necessary for my case. I might very legitimately say this: we have proved that this ship is being built as a gunboat for the service of the confederate government under the orders of its agents; and we have proved that the work which has been done upon her already is specially adapted for such a service, and that some part of it is not properly adapted to any other service, whether that has reference to the structure or the rigging or the machinery is not material, but the government seizes her when she is incomplete. If it is necessary to draw an inference, what is the inference which you would draw? Why, that she would have been completed if they had not seized her, with all that was proper for her as a gunboat, within the realm, unless evidence were given to the contrary. The evidence was, that she only required the iron plate for the pivot guns to turn upon it, for that really is the point. We proved that she wanted nothing to enable her, being a small ship, to receive that small number of guns, which of course could easily be taken on board the moment she crossed the three-mile line, or within it if it were necessary, to enable her to destroy the commerce of her enemies upon the ocean; nothing more was necessary according to the evidence than this, (and it could be done at any moment,) to screw down upon the deck, in the proper place, an iron plate for the pivot guns to run upon, which, of course, could be shipped afterward. Can it be gravely and seriously contended, first of all, upon this evidence, that it was not a reasonable inference that that would be done within the realm, where everything else was being done? But, secondly, if that inference is not to be drawn, can it be gravely and seriously contended that, the proof being in other respects what it was, it would be a breach of the act if the pivot plate were laid down within three miles from the British coast, although no guns and no arms were put on board her, but were added afterward, but that there would be no breach if the pivot plate as well as the guns were added outside? Your lordships have heard, in my learned friend's comment upon the evidence, of a vessel called the *Phantom* built side by side with the *Alexandra*, evidently not a ship of war. Suppose the *Phantom* had gone out with her, and carried not only guns but the pivot plate and screws, and that just outside the three-mile line she delivered the pivot plate and guns and screws all together, and the pivot plate was put on and screwed so that the ship was ready for work, can any one sitting in the place of a judge gravely and seriously say that if it would have been an offense under the act to take her out without the arms, and put the arms on board beyond the three miles, provided the pivot plate had been put down first, it is not an offense to take her out without the arms and without the pivot plate being put down, provided that the pivot plate and the arms are going out beyond the three miles together? It is not necessary to talk about common sense in this matter; but I must say that it is a departure from the plain meaning of the words.

Mr. BARON PIGOTT. You are not upon the point of the verdict being against the evidence yet, are you?

Mr. ATTORNEY GENERAL. No, my lord; but it is unavoidable that one draws illustrations in argument from what is actually in evidence in the case. I agree that the two lines of argument upon the motion must be kept distinct; but at the same time I do not think that the illustration was illegitimate.

Mr. BARON PIGOTT. By-and-by, probably, you will tell us, supposing those words do not mean as you have contended, constructing the ship, but something done on board the ship after the ship is a perfectly constructed ship, what the evidence is of any furnishing, or fitting out, or equipping, after the ship has become a ship, we will say within the definition, taking the definition of a ship as merely the hull.

Mr. ATTORNEY GENERAL. I will follow your lordship in that. It appears to me that there is sufficient evidence upon that subject, supposing that view should be adopted; but of course it will be in your lordship's mind that I have already said, I apprehend it to be quite clear, at least I think that will be your lordships' judgment, that the evidence pointed irresistibly to the conclusion that this ship was to be furnished with all the furniture necessary to enable her to go to sea; and, that being so, I will not repeat what I have already argued, namely, that if she were taken in a state of hull, with proof that the making of the hull in that state was with the intent and the purpose to do more, and to equip within the realm, it would be within the act.

Now I will come to what I conceive to have been the principal arguments, and your lordship has just touched one of them, but not the one which I proposed to take first, on which my learned friends seemed to rely. I may call them negative arguments. The first was the absence of the word "build," and I think that from something which fell from my lord, he appeared to be rather impressed with that argument. I am in your lordships' judgment, but I venture to submit that it is a somewhat dangerous thing to cut down the interpretation of the words which you have in an act of Parlia-

ment, because some other word is not there. If the case falls within the words which you have, that is enough; and the mere circumstance that another word is not added, for which there might be reasons, does not, I confess, seem to me to be a justification for departing from the proper meaning of the words which you have. But, secondly, I think that Mr. Mellish virtually answered that argument himself; for he went on to argue in this way. He said, The legislature omits the word "build," therefore it is meant to authorize building. Now I demur there; I say that it is only meant to leave untouched any building, provided there was not the equipment, fitting out, or furnishing, which is struck at by the act. But he goes on to say: *ergo*, it was meant to authorize building for those purposes; *ergo*, it was meant to authorize any equipment necessary to enable the ship, when built, to take the sea. There I part company with him. I say that was just the reason why it was not necessary to put the word "build" in. He says it would be of no use to be allowed to build the ship unless it is to be able to take the sea. The answer is, that it was not the object either to encourage or to interfere with the mere building of ships at all. It is not the business of the ship-builder that is struck at, his person, or his trade, or his purpose, but the business of the person who may be called the equipper, that is, the procurer of the equipment, which is struck at; the author of the transaction which is warlike; the man who has the warlike object in view. It is his intention which is struck at, the governing intention; and the words used are words apt to cover everything that will enable him to accomplish his purpose. If it be true, as Mr. Mellish admitted, that a builder cannot build a ship for such a warlike purpose without equipment, that is a very good reason why it was not necessary to put in the word "build," because it is enough to put in the words "equip, furnish, fit out, or arm," for the prohibited purpose. I say that the legislature gives no license to builders here. There is not the least trace of any intention to permit builders, from any peculiar favor to their trade, to do things which other people may not do; but, inasmuch as they were not the specific class of persons against whom or against whose part in the matter this act was primarily directed, it was thought enough to put in words which would meet the case of every ship meant to be prepared to take the sea for the prohibited purpose; and I can easily imagine, though that is, after all, a speculation, that there might be a further object in omitting the word "build," which would be this: to preclude the question of what I may call the builder's intention. Your lordships may recollect that in the American case of the *Santissima Trinidad*, it was held that the builder was quite at liberty, as an article of merchandise, to build a ship, and not only to build it but to arm it and equip it, and to take it abroad with a crew, capable of serving with it in the service of a foreign state, provided always, that as a matter of fact it appeared that, as long as that ship was within the jurisdiction, the builder was merely dealing on his own account, not for the purposes of war, but for purposes of merchandise; meaning to carry the article across the sea as he might carry powder or guns, and to take his chance of getting a profit in the country of one of the belligerent powers. Whether it would have been wise to prohibit that or not is not the question. It was not held to be prohibited, because there was an absence of intent on the part of any person having the control at the time that the ship should be employed in any belligerent service. The builder did not mean to employ her himself, and to make war with her himself; and he, of course, had no control over the remote and contingent intention which might be formed at a future time out of the jurisdiction by a foreign potentate who at that time had not acceded in any way to the design. In a case of that sort, which is a very improbable case—

Mr. BARON CHANNELL. I understand that in that case the builder built the ship upon his own speculation; he did not intend that it was to be employed in the foreign service, and nobody's intent was to be inquired into.

Mr. ATTORNEY GENERAL. Precisely, my lord; it was held that he did not intend to use her as a privateer, and he could not form an intention for the foreign prince; and that, for that reason, it was mere merchandise. And your lordship will find that the case of the ship *Brothers*, one of the cases which I shall hereafter refer to, and the case of the ship *Alfred*, which are printed in the appendix, are two converse cases, which illustrate the same principle; those were cases of the sale of ships in the United States to a belligerent power, ships previously fitted out for war, but with a lawful purpose, at a time when it was supposed that war might break out between the United States and Great Britain. Those vessels were prepared to be used lawfully as privateers, and the expected war not taking place, the ships remained on hand fully equipped and armed. It was held that the sale was lawful, because the preparations had not taken place, and the article had not been put into the condition in which it was, with the prohibited intent; the one sale was within the neutral territory; the other sale was at Buenos Ayres, but the principle is the same. I suppose the legislature may have been of opinion that it was so unlikely that any great mischief would arise from the building of such ships on mere speculation, without any previous concert with a foreign power—without the accession of any intent which could be called warlike, capable of determining the intended employment of the vessel—so unlikely that it would take place to the extent of requiring interference, that it was not thought de-

sirable to raise such questions with ship-builders; and for that reason, to avoid raising that question, which might perhaps have been raised if the word "build" had been put into the clause, it may have been omitted. And I may observe that although it may be thought the principle of the act would have justified the prohibition of transactions of that kind, either building on speculation with a view to sell abroad or the selling of a ship ready built and ready equipped and armed in this country, yet it is not difficult to perceive that this was a remote and improbable evil which the legislature might well think it was not necessary specifically to provide against; because it is obvious, that, if there were really no concert with the foreign power, no accession of that foreign power to the transaction beforehand, then peace might take place before a market had been found for that ship, and there would be questions of price, and the man having the article on his hands, and there being no contract, of course he could not command his own price. And then there is the further difficulty of carrying contraband to be sold abroad. All those things make it not very likely that ship-builders would go to the great expense and incur the great risk of building ships of that kind on mere speculation; and I am not aware, in point of fact, that it has been found to happen. Whether or no that was the reason of the omission I cannot tell. All I venture to say is this, that the builder not being the person whose intention would be the governing intention, in the cases struck at by the act words were used which would not be separately and exclusively applicable to the builder, but which would be equally applicable to the person having the governing intention, and to all persons accessory to and having a participation in that intention. I have said, my lords, all that I have thought it necessary to say upon the absence of any provisions against sale; and I will not do more than make one remark upon the argument which has been urged, to which Mr. Baron Pigott has just referred, that there must be a ship already in existence because the ship is to be forfeited; I think it would be a very unnecessary construction of this act to say that, though it would not make much difference in the result, according to my view, whether it be so or not. I think that the liability of the ship to forfeiture would have reference to the condition in which it was found, however imperfect. It is clear that the act aims at prevention and not at punishment. It would be a most singular construction to suppose that the act intended that you should wait till the ship approached to any particular stage before the prevention could be applied. It is enough if you find evidence of an attempt or endeavor to do that which, if completed, would result in an equipment within the act. It seems to me, that you seize whatever you find. It is the "ship or vessel," and it may be a ship or vessel in an imperfect state and condition. But, it is not really important that a different view should be taken, because we are not dealing, and never shall be dealing in cases of this sort, with circumstances in which it would be possible for the jury to come to the conclusion that a mere hull, a mere block of wood put together without any equipment, fitting, or furniture was to be the result of the transaction in this country. It is quite clear in this case, and quite clear in every case, to which the act can possibly be applied, that the intent and endeavor is to get up a vessel in a condition to take the sea before she leaves this country, which she cannot be without some fittings, furniture, and equipment; and therefore, in truth that point is an idle one, and can never arise.

I will now turn to the only other argument upon the language of the act, which I heard from my learned friends, which appears to require an answer, and which I think made some impression as one deserving attention, (I mean no more,) upon some of your lordships; that is to say, the argument derived from the language of the eighth section. I think your lordships will find that to be an argument which rather recoils upon the other side. The eighth section is applied to a totally different purpose; it regulates the limits of the hospitality afforded in this country to existing foreign vessels of war, and it regulates that to this extent: it cuts it down to those things which cannot be brought within the description of augmentation of force, or addition of any equipment for war. By the universal practice of all mankind, ordinary hospitality for common affairs, for repairs and additions to that furniture which is necessary for the common purposes of navigation, is in all countries during war allowed, under regulation, to the ships of war of foreign nations; and the object of this section is to cut that down within the narrowest limits consistently with the received practice of nations—narrower than those of the American government—for I observe the words are "equipped for war," not, as they say, "solely applicable to war."

Mr. BARON CHANNELL. The word "solely" is only in the American act.

Mr. ATTORNEY GENERAL. Yes; so that if it is for war—if it is an equipment which answers a warlike purpose it is prohibited here, though in one sense it may be *ancipitis usus*, and capable of being used for peaceful purposes. That seems to be illustrated by the note of the judgment in the *Oreto*, where the question raised was, whether certain blocks were meant for a warlike or peaceful purpose; and it appears to have been held that, if it had been proved as a matter of fact that they were for warlike purposes, it would have been in addition to the equipment of war; and in some of the American cases, if port-holes are added to a ship, that is treated as an addition to the

equipment for war, provided that as a matter of fact they are meant for warlike purposes. I conceive that this is therefore a stringent regulation, cutting down the hospitality ordinarily afforded to existing ships of war of a belligerent country, so as to exclude everything which might increase the warlike force or power of the belligerent nation. Then, because the words "any equipment for war" are used there, which are not used in the seventh section, where "equipment" is spoken of, (and that, I think, is an argument at once to the contrary,) are you to infer that because the legislature strictly prohibited anything being done to existing lawful ships of war belonging to a belligerent which could add to the warlike force of those ships, therefore the legislature meant to permit the creation of ships of war for a belligerent, provided they were not made in a state absolutely perfect for all the purposes of war? That is the argument. Observe the difference between making equipments for a new ship of war, only not completely equipping it, and adding equipments of war to an old ship: the least addition to an equipment of an existing ship is prohibited, and yet it is gravely argued that you may do everything but complete the original equipment of that, which, when equipped, will be a new ship of war; so that though you may not put into an existing ship of war a single gun, or cut an additional port-hole, or make an existing bulwark stronger, yet you may do all but bring into a condition to commit hostilities a new ship of war, adding to the navy of the belligerent a man-of-war like the Alabama, taking the seas, only without her guns and without those equipments which are exclusively warlike. That is the argument. Is that reasonable? Does it not appear quite clear that the policy of the two sections is consistent? The seventh says that you shall not equip or attempt to equip a new ship of war for a foreign government. The eighth section says that you shall not increase the force of an existing ship. The two are quite consistent, but the eighth only addresses itself to the common comity of nations, by permitting additions to existing ships, which have not come into existence by any abuse of our neutrality, but which had a previous lawful existence by which they are entitled to be recognized in all other countries. We say, We will not refuse you common hospitality, but we will not let you have anything which shall make you more powerful for war than you were before. Do you mean to say that by permitting Alabamas to go out, though not completely equipped, you are not making the belligerent more powerful for war than he was before? Is it gravely to be said, You may give them a whole new ship of war, minus the pivot plate, but that you may not put a pivot plate into an existing ship of war? It would be a strange state of things, indeed, if that were the proper interpretation of the act.

Now, my lords, I think I might, perhaps, again, in connection with that subject, remind your lordships of the species of regulations under which we give international hospitality to the ships of war of foreign countries. I said that our own orders upon the subject applicable to this war are printed at page 717 of Wheaton. You have a note of them already, but I think, in connection with this part of the argument, they might be again referred to. I think, according to the authorities of the United States, the addition to a gunboat more weakly built—

Mr. BARON CHANNELL. What do you understand by the meaning of the word "such" in the eighth section? I have no difficulty in understanding the interpretation you put upon the eighth section, but the word "such" would seem to refer to the ship, which is within the category of the seventh section, and no other: "*And be it further enacted*, That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions beyond the seas, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, shall by adding to the number of the guns of such vessel;" then the only vessel that it immediately refers to is a vessel such as is described in the seventh section.

Mr. ATTORNEY GENERAL. I think, undoubtedly, it is very awkwardly expressed, but it must be referred to what follows: "or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war or cruiser, or other armed vessel, which at the time of her arrival," and so on—the word comes by anticipation—

Mr. BARON CHANNELL. It is not very clear, and it may mean that.

Mr. KEMPLAY. If your lordships will refer to the corresponding American act, you will see that they have inverted the order.

Mr. ATTORNEY GENERAL. That would be the construction to be put upon it; but it would have been better, perhaps, if we had adhered to the American order. I will not say it stands to reason; I do not want to assume anything *a priori*, but I think if you will read the clause you will find proof that that is its meaning: "If any person shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting." You have not come to the accusative case yet; and, therefore, the subject of those acts has not yet been described, "the warlike force of any ship or vessel of war or cruiser, or other armed vessel."

Mr. BARON CHANNELL. I think so; it seems to be out of its proper place.

LORD CHIEF BARON. It means "by adding to the number of the guns of such vessel" "as hereafter mentioned."

Mr. ATTORNEY GENERAL. No doubt; it is more a Latin than an English way of arranging the sentence. We know that in the Latin language nothing is more common than that that which is subsequent in order of sense should be first in the order of the words, and it is so here, though it is not very common in the English language. I think your lordships will find that even under this clause, according to the American decisions, the addition to a gunboat constructed with weaker bulwarks of such strong bulwarks as the Alexandra had for war, would have been an offense. Your lordships will judge of that when I come to those authorities.

I do not think much of my case turns upon any arguments *ad hominem* in this case. My learned friend Mr. Mellish anticipated that I should take some advantage of the variance there has been in the different arguments presented on the other side. I do not want to place any reliance upon that; at the same time I am encouraged in my view of the unsatisfactory character of this argument by the fact that we have had different constructions offered on the part of the claimants on the trial and now; and, on the whole, we have had four distinct constructions, the only two offered at the trial being entirely given up. Perhaps I ought to correct myself. I am not sure that my learned friend, Mr. Mellish, did not argue at the trial as he has argued here. My learned friend, Sir Hugh Cairns, certainly did not. At the trial, Sir Hugh Cairns submitted these views: first, that the words "equip, furnish, and fit out" might be applied *reddendo singulos ingulis*.

LORD CHIEF BARON. That was given up.

Mr. ATTORNEY GENERAL. I know your lordship did not adopt that view.

LORD CHIEF BARON. He gave it up, and at the time that that discussion took place there seems to have been a great misapprehension. I understood the learned attorney general to agree with me that all the words meant the same thing.

Mr. ATTORNEY GENERAL. I am sure your lordship entirely misunderstood him.

LORD CHIEF BARON. I am sure of that.

Mr. ATTORNEY GENERAL. It was very unfortunate that any such misunderstanding should arise.

LORD CHIEF BARON. Yes; but it would be as well when a discussion of that sort arises between counsel and the bench that there should be a more distinct expression of difference of opinion.

Mr. ATTORNEY GENERAL. If your lordship will excuse me for saying so, I am sure you must have failed to convey to the attorney general's mind the meaning you desired to convey.

LORD CHIEF BARON. After all, I merely expressed that at that time as an opinion which I might review afterward.

Mr. ATTORNEY GENERAL. I do not think the learned attorney general understood your lordship as inviting any expression of opinion from him upon the subject, but merely throwing it out as a matter for consideration.

LORD CHIEF BARON. It is very much to be regretted, and, generally speaking, if it is intended to tender a bill of exceptions, or to take any exceptions to the ruling, it is better to do that while the matter is in hand.

Mr. ATTORNEY GENERAL. Your lordship is well aware that we intended so to do; but, all persons acting in equally good faith at the time, it was thought not necessary, and I think it was from your lordship that that suggestion proceeded.

[The court adjourned for a short time.]

Mr. ATTORNEY GENERAL. I was first going simply to enumerate, without much comment upon them, the constructions which had been advanced by my learned friends; and, as was stated by the lord chief baron, the first I mentioned was advanced tentatively, and was given up; the second, insisted upon by Sir Hugh Cairns at the trial, but which he did not repeat here, was that this clause was only directed against English privateers; that is, where Englishmen were concerned, and were going to carry on war upon their own account. I have not heard that argument repeated here, and I am not at all surprised at it, because it is very obvious that the language of the act does not point to a distinction of that sort; and it would be inconceivable that that could be the object of it, to allow a foreign belligerent power to do what is described in the clause, and only to provide against English privateering, which would be, one would imagine, an offense against the common law. But so far as this act gives additional sanctions and imposes additional penalties, applicable to the case of English privateers, it is, perhaps, not entirely unworthy of observation that the whole scope of my learned friend's argument, if it were successful, would be to permit English privateers, as well as foreign ships, to be fitted out within the realm to the extent they contend for; that is to say, so long as the armament was not complete, the equipment not distinctively warlike, and the ship not immediately in a position to commit hostilities, both English privateers to carry on war on their own account, and ships fitted out on the account of foreign governments, would be in the same situation. I

suppose, also, their argument would go to this length, that the confederates might, if they pleased, buy up a large ship-builder's yard in this country and establish a dock-yard there of their own and make ships upon any scale, provided they did not bring them into that state of distinctively warlike equipment which my learned friend's argument suggests to be necessary. The third construction contended for is that which I have been dealing with throughout the argument, which I understand my learned friend, Sir Hugh Cairns, to have contended for here on the present occasion, namely, that some equipment of a distinctively warlike character is necessary. I have already dealt with that, and I will say no more upon it. My learned friend, Mr. Mellish, indicated a disposition to depart from that, and he went the whole length of saying, as I understood him, that even an equipment of an exclusively warlike character was allowed, provided always that the ship, when it left British waters, was not in a condition to commence actual hostilities; in other words, (the argument can mean nothing less) that arming within the realm is necessary as well as the rest, because the argument of my learned friend seems to me to be unintelligible, and nothing that falls from him ever is so unless it goes that length. I have dealt with that also, and I do not mean to repeat what I have said.

I wish to trouble your lordships a little with such authorities as we have, and they are, indeed, exclusively from the United States; but, bearing in mind the just observations which fell from the bench yesterday as to the only purpose for which those authorities could properly be referred to, and of course not being for a moment under the impression that they can be authorities directly governing the construction of an English statute, yet I refer to them as decisions of men skilled and learned in the law, always spoken of with respect in this country upon matters which, when examined, are found to be more or less *in pari materia*, and entitled, therefore, to that degree of weight due to the decisions of such persons, and which they have often received from the bench here. Before, however, I refer to any of those decisions, your lordships will permit me to give you an example and illustration, perhaps it may be no more, but, at all events, a useful example, coming from a source of considerable authority, as to what may be included within the meaning of the word "equipment," viz, from the treaty between Great Britain and the United States of 1794. In the eighteenth article of that treaty there is a convention between the two countries as to what between them shall for the future be considered to be contraband of war. Of course there are mentioned arms and everything of that description and all implements of war, as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, "and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted." Now, that observation may not be entitled, perhaps, to very great weight; but I think it is entitled to some, that fir planks would enter into the structure of the ship, and they are spoken of as things serving directly to the equipment of vessels; serving as an example of the use of the word "equip," which may comprehend things that enter into the structure, whether it comprehends the entire structure or not. In this case I should think it would be applicable to such things as the bulwarks and other things. And your lordships will recollect one or two cases in Bee's Reports, which my learned friend, Sir Hugh Cairns, mentioned, which appear to me to show that such a view has always been taken in the United States upon the construction of their statute. There is the case of the ship *Mermaid* in Bee's Reports, page 69, the British consul against the *Mermaid*. It was, like all those American cases, a case of restitution of prize on the ground that the ship which took the prize had been fitted out or had her force augmented within the United States unlawfully and in violation of their neutrality laws. At page 70 we have this statement: "The second ground of libel is, that she," that is, the captured vessel, "was fitted for war in Charlestown." This is the judgment of the court, which I am reading from: "From the evidence, as well as from the acknowledgment of the party, there cannot be a doubt that this vessel underwent a material alteration previously to the change of ownership. Her quarter-deck was taken away, all decayed timbers and planks repaired, her ports opened, and other work done. By whom, then, at what time, and with what intent those alterations were made, and under what penalty, are all material questions upon the determination of which the cause must turn." Well, my lords, if those were not works coming within the description of the prohibited things, fitting out and so forth, I apprehend they would not have been material questions. The court, examining those questions, found, as a matter of fact, that all this was done when the ship was American property, before the change of ownership, and when there was no contemplation of any breach of the law; and, in fact, the case resolved itself merely into the question whether, the ship having been brought into the condition in which she was lawfully and not for the prohibited purpose, and, in fact, before the act of Congress had passed—whether the American owner was to have his property laid up and rendered useless because she had been preparing for war between his own country and Great Britain at a time when it was not merely lawful but laudable? It was held that, it having been done with that laudable intent, for the defense of his own country in time of war, he was warranted in selling her afterward,

and that such a sale was lawful; but the court obviously considered that if those things had been done afterward, and in order to prepare her for employment in the service of another belligerent, that might have been a sufficient ground for the condemnation of the ship.

The other case, of the ship *Brothers*, mentioned by my learned friend, Sir Hugh Cairns, to your lordships, and which follows the *Mermaid*, almost immediately in the same book, at page 76, will, I think, tend to illustrate the same principle. That was a case of augmentation of force. The ship was already a complete privateer when she first arrived in the country, and it was held to be, therefore, only a case under the section which related to augmentation of force; that was an addition of equipment solely for purposes of war; that was the language of the statute. The ship, according to the evidence, being an armed vessel when she arrived, and being repaired, two new ports were said to have been cut in her, and the court examined that, obviously, upon the supposition that if two new ports had been only cut in the ship, in order to give her increased power for war, by the cutting of those ports the case would have been brought within the act. But, upon examining the evidence, it is found that, upon the result of it, all that was made out was that two of the ports in the waist were altered; and the court says this would not amount to any additional equipment, nor could it be considered a breach of neutrality, their act only dealing with such alterations as augmented the warlike force; and in the opinion of the court, as a matter of fact, these were not two new ports cut *de novo*, but a mere alteration not augmenting the force. These two instances seem to show the view as being clearly entertained, that changes of that sort, though affecting the structure of the vessel, nevertheless would be within the meaning of the terms "equipment" and "fitting out" in the interpretation of that act.

There is another case which was mentioned by my learned friend, Sir Hugh Cairns, in which I observe that practically much the same view was taken and acted upon; although there seems to have been no judicial decision on the point. It is the case of the *United States* and *Guinet*, in Wharton's *State Trials*, at page 95. It appeared that a ship having come into port with a certain amount of armament, and a certain number of port-holes, ten, I think, on each side, at the time of her arrival, and with four guns and two swivels; after she came into port she was put into the hands of a ship-carpenter to repair, and "the ship-carpenter declared that he would open the number of ports (twenty) which were pierced when she came into port; there were twenty pierced, but only four actually open. The ship-carpenter declared that he would only open the number of ports (twenty) which were pierced when she came into port, and in all other respects fit her for a merchant ship;" "the twenty ports being opened, and the other repairs of the vessel proceeding rapidly, the government instituted an inquiry into the subject, in order to ascertain the nature and design of her equipments. On examination, the master warden found the vessel in great forwardness; her twenty ports open, her upper deck changed, &c., and four iron guns on carriages with two swivels, were lying on the adjoining wharf." She had mounted, when she came in, those four guns and two swivels. "He therefore desired the carpenter to desist from working any further on the vessel, and made a report on the subject to the Secretary at War, who directed that all the recent equipments of a warlike nature should be dismantled, and the vessel restored to the state in which she was when she arrived. The master warden accordingly caused the port-holes to be shut up, and even refused to allow any ring bolts to be fixed in the vessel. A few days before she left the port a witness said he saw four guns in her hatchway; the carpenter who repaired her said she carried with her from the wharf the four guns and two swivels that she had brought in, and according to the custom-house entry, she sailed from that city in ballast, having nothing in her hold but provisions, water casks, and wood for the ship's use." She had been a merchant vessel when she came in, and what was done to her was done with the purpose of adapting her to war. You see that the port-holes were ordered to be shut up, the ring bolts were not permitted to be fixed, and then afterward, when she was at Wilmington, because a few additional guns had been put on board, it was held that there was a fitting out and arming, and the person who had acted as interpreter was convicted. It does not go very far, because it may be that the taking of additional guns on board was enough to justify a conviction of itself. But I think the facts I have read will tend to show what was the understanding which was always acted upon by the government of the United States, with respect to the meaning of the words "fitting out," and "equipment."

Then, my lords, there is the case of "*The United States and Quincy*," reported in the 6th Peters, which has been already mentioned to you. That case seems to me to rule directly and distinctly the very point which we have been arguing and discussing. I am sure your lordships must recollect the case. Besides being reported in the 6th Peters, it is also printed in the appendix to the report of the trial in this case. It arose upon an indictment against the defendant for a misdemeanor created by the American act. He was not indicted as the principal; he was indicted as being "knowingly concerned in fitting out." And your lordships will recollect that there was that

passage in the judgment which has been referred to, as to the disjunctive occurring in that part of the definition of the offense, when the conjunctive occurs elsewhere.

Your lordship has suggested an interpretation of that which in itself would be a perfectly sound one, but which I do not think is reconcilable with the decision as reported in the book; I mean that if fitting out and arming conjunctively constituted the principal offense, a man who assisted in any part of that principal offense, whether it were in arming or fitting out, would be justly chargeable as an accessory to it. Every one must see the reasonableness of that view; but in point of fact the decision did not proceed upon that ground: it proceeded upon this ground, that each offense is distinct and substantive, that it is not to be regarded as a case of principal and accessory, and that since the United States had chosen in their legislation to say a man shall not assist in fitting out or arming, whatever difficulties there might have been in dealing with a conjunctive, as to which the judge seems to have felt doubt, in the indictment of a principal offender, those difficulties did not arise upon that class of cases. Of course, my lords, I am not going to argue before your lordships a point so irrelevant to the present discussion as the question, whether in that respect the United States court gave a judgment which your lordships would be likely to follow in a similar case or not; because we should never forget that our statute does not raise that difficulty. We have the disjunctive throughout. I think the true conclusion to arrive at is, that, rightly or wrongly, the learned judge thought the copula "and" might be construed as if it were a disjunctive throughout the whole of that act. Whether I am right in that supposition I cannot tell.

But what was it that was specifically determined as the main point in that case? It seems to me that it is a determination directly in favor of the view which we take of the effect of similar words in our act, which does not present the difficulties which that act did. Observe what was the evidence in the first place. My learned friend, Sir Hugh Cairns, referred to it to suggest an interpretation, which I will presently show is utterly untenable, of the judgment. The evidence was this. "Evidence was given of the repairing and fitting out of the schooner Bolivar, in the port of Baltimore, in 1827. That she was originally a Maryland pilot-boat of sixty or seventy tons. The work was done at the request of Henry Armstrong and of the defendant, who superintended the same; that she was fitted with sails and masts larger than those required for a merchant vessel, and was altered in a manner to suit her carrying passengers, and with a port for a gun." That was what you may describe as a structural alteration. Then it appeared that she sailed for St. Thomas, having on board provisions, thirty-two water casks, one gun-carriage and slide, a box of muskets, and thirteen kegs of gunpowder, and a bond was given not to commit hostilities. My learned friend referred to that, and said the gun-carriage and slide, and the thirteen kegs of gunpowder, and the box of muskets might have been regarded as an arming of the ship; to which my answer is, that whether it might have been so regarded or not, the point of law ruled in that case did not turn upon those facts, but excluded them, because your lordships will observe that this was the point of law and the way it arose. It seems to be the practice of the American courts to enable points not merely to be determined at the trial subject to subsequent consideration, but to be sent while the trial is going on, (the trial I suppose being adjourned,) by way of a case or reference, to the superior courts for their direction. And in that case the defendant moved the circuit court for their opinion and direction to the jury upon four points, which are expressly mentioned in the report. The district attorney of the United States, on the other hand, also moved for four directions to be given according to his view, and the court determined between them. This is the material point: what were the directions which the court said ought not to be given, and what were the directions which the court said ought to be given? The first direction moved for by the defendant, which the court rejected, was in these terms: "The defendant moved the circuit court for their opinion, and direction to the jury, that if the jury believe that when the Bolivar left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, she was not armed or at all prepared for war, or in a condition to commit hostilities, the verdict must be for the traverser." The court said that that direction was not to be given; in other words, that it would not be a correct statement of the law upon their act; that if the jury believed that the ship was not armed, and that she was not prepared for war, or in a condition to commit hostilities, it would not be correct to say that that entitled the defendant, even upon an indictment for a misdemeanor, to an acquittal. Now, what was demanded by the district attorney of the United States? "First, that if the jury find from the evidence that the traverser was within the district of Maryland, knowingly concerned in the fitting out of the privateer Bolivar, with the intention that the said vessel should be employed in the service of the united provinces of Rio de La Plata to commit hostilities, or to cruise and to commit hostilities against the subjects of the Emperor of Brazil, then the traverser has been guilty of a violation of the third section of the act of Congress, although the jury should further find that the equipments of the said privateer were not complete within the United States, and that the cruise did not actually commence until men were recruited and further equipments were made at the

island of St. Thomas, in the West Indies; and should further find that the Bolivar, on her way from Baltimore to St. Thomas, had no large gun, no flints, nor any cannon or musket balls, and that the muskets and sabers were, during the voyage, nailed up in boxes." The court found that this direction ought to be given; and there was a long argument with which I am not going to trouble your lordships. But, at page 445, in the 6th Peters, the court said: "This varied phraseology in the law was probably employed with the view to embrace all persons, of every description, who might be engaged directly or indirectly in preparing vessels with intent that they should be employed in committing hostilities against any power with whom the United States were at peace." And shortly afterward: "We are accordingly of opinion that it is not necessary that the jury should believe or find the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment." That appears to me to be a direct finding, supposing their act was *in pari materia* with ours, against the argument which has been addressed to your lordships by my learned friend. Then they go on to say that other instructions ought to be given. "The first instruction, therefore, prayed on the part of the defendants must be denied and that on the part of the United States given;" and other instructions are given as to whether the intent must be a fixed intent or one contingent and uncertain, which was determined in the defendant's favor.

There is another case which I will ask your lordships to allow me to refer to, not upon the same statute, but, I think, involving similar principles of construction. The American statute to which I am now going to refer, upon which this question arose, is chapter 91 of the acts of 1818; it is dated the 20th April, 1818; and in the collection of public Statutes at Large of the United States, edited by Mr. Peters, volume 2, at page 450, your lordships will find that statute; it is one of their slave trade acts.

Mr. BARON BRAMWELL. Allow me to ask with respect to that case of Quincy, it has been very much relied upon, but it seems to me a little inconsistent with an opinion of your own as I understand. Do I rightly understand you to say that upon our statute it must be conceded that there cannot be one offense committed by the subordinate, the assistor, unless there is a principal committing the offense which this statute forbids him to commit? I have understood you to say that unless an offense has been committed by a principal within the act of Parliament, nobody can be guilty of assisting within the act.

Mr. ATTORNEY GENERAL. I think certainly that unless something is done, or intended to be done, within the realm, which, if committed, would come within the words equipping, furnishing, fitting out, and so on, nobody can be assisting in doing it.

Mr. BARON BRAMWELL. But you see Justice Thompson, who gave the judgment in this case, seems to think differently.

Mr. ATTORNEY GENERAL. It is so; I quite agree to that. I am very far from saying that my opinion is necessarily right. I do not wish, in the position in which I stand, for the argument's sake merely, to dissemble my opinion; that is the opinion I have formed, upon the English statute.

Mr. BARON BRAMWELL. I think that is a very important matter; because the case of the United States against Quincy has been often referred to; I do not mean in court, but elsewhere. And we cannot disguise from ourselves the importance of appearing to neglect that authority. It has been referred to as an important authority and as satisfactory. I confess that, to my mind, it is a very unsatisfactory case. It seems to me that the reasons given by the learned judge for his opinion are very insufficient indeed. He says, if the objection were well founded, it ought to state that the defendant was concerned in fitting out, the Bolivar being a vessel fitted out and armed. He then goes on, "It is sufficient if the indictment charges the offense in the words of the act." That has been tried over and over again in cases where the words of an act which have been put into the indictment have been found to contain a different meaning from that which they do when read in the act with all the surrounding words—that is one bad reason. Another is, that the objection of the defendant was not that the indictment ought to have said that the Bolivar was a vessel fitted out and armed; but the objection was this: That the Bolivar, being a vessel intended to be fitted out or armed, or which certain persons were intending to fit out or arm, he, the defendant, assisted. He does not say, I cannot be guilty of assisting unless the vessel was actually fitted out or armed; but what he said was, I cannot be guilty of assisting in either of two acts, both of which are necessary to an offense, unless both of those acts were contemplated by the parties whom I was assisting. I own I think this judgment is a very unsatisfactory one.

Mr. ATTORNEY GENERAL. I confess I think it open to the particular criticism which your lordship has just made upon that part of it; but I do not think that need necessarily affect the principles laid down in the remaining part of the judgment.

Mr. BARON BRAMWELL. No, truly as you say, what they held in that case was practically this, for inasmuch as they had the evidence before them, I take it that it may be said that they practically held that the case would be within the statute, although the

vessel was not in a belligerent condition, or in a condition to commit hostilities at the time of her leaving the port.

MR. ATTORNEY GENERAL. Yes, my lord, I refer to it for that only, not dissembling from myself that the authority of the case is liable to the deduction his lordship has spoken of; that another point was ruled in it which I should not be prepared to insist upon it as actually ruling any similar case here. The reasons for that ruling may not seem to be entirely satisfactory.

LORD CHIEF BARON. You mean with respect to the fixed intention?

MR. ATTORNEY GENERAL. No, my lord. I mean with regard to the accessory and the principal, if those terms may be used; remembering that, in another sense, every offender under the act is a principal. It seems to me that you may divide the points determined in that case into three. First of all, a point of form—not of form ultimately, but a very substantial one—the question whether there must be an intention to fit out and arm the ship within the jurisdiction in order to bring in a person as accessory under the clause; and it was ruled there that it was not necessary that it should be so, because, even supposing both acts must concur in the principal, either would do in the accessory; not according to the view which your lordship has suggested, which would be intelligible, but according to another view which is not to my mind, any more than it is to your lordship's, entirely satisfactory.

LORD CHIEF BARON. I am glad to hear you say that, because if one knew the decision without the reasons for it, it might be of more authority than it is now; and I confess, accompanied with those decisions, it makes me feel very much doubt of its value, although we must no doubt take it as of some value. There was a case to go to the jury, although that which was intended and attempted to be done was something short of putting the vessel into a warlike condition at the time.

MR. ATTORNEY GENERAL. The decision upon the point for which we refer to it may, as it seems to me, be kept separate from the rest, subject to the observation, that if there was any point not correctly ruled in the case, it, in some degree, detracts from the authority; but on this branch of the clause they said in substance, "We are entitled to read it just as if the word 'or' were used instead of 'and'" throughout, and for that purpose I refer to it. I do not think there is anything to impeach it for our purpose more than this, that any points which were incorrectly decided may in some degree detract from its general authority. I will ask your lordships, also, to bear in mind that this case contains traces of what is always an unsatisfactory proceeding on the part of a court, an avoidance of part of the question; because it is not at all clear that the court were prepared to agree that the word "and" was to be construed in that sense, which seems to be its more natural one in the American act, requiring the concurrence both of fitting out and arming in every case for the principal offense.

Then observe, these are the remarks made by the court upon that subject at page 464: "On the part of the defendant it is contended that the vessel must be fitted out and armed, if not complete, so far at least as to be prepared for war, or in a condition to commit hostilities. We do not think this is the true construction of the act. It has been argued that although the offense created by the act is a misdemeanor, and there cannot legally speaking be principal and accessory, yet the act evidently contemplates two distinct classes of offenders—the principal actors who are directly engaged in preparing the vessel, and another class who, though not the chief actors, are in some way concerned in the preparation. The act in this respect may not be drawn with very great perspicuity, but should the view taken of it by the defendant's counsel be deemed correct (which, however, we do not admit) it is not perceived how it can affect the present case." The court seems, therefore, to have thought that although the letter of the act might seem to favor that view, and to require that you should have the arming in every case, as well the fitting out, it had not been so understood and acted upon. That if it were necessary to decide that, they might have found the means of deciding that otherwise; but they pass on and say, that is not necessary, because the other clause is disjunctive. I submit to your lordships that nevertheless upon the other point the case may well stand as a good authority notwithstanding that.

I now ask your lordships to allow me to mention the other authority. It is not upon the same act, but is upon one of the American slave trade acts, to which I think I gave your lordships a reference.

MR. BARON BRAMWELL. Allow me further to put this. It has been said that this case is an authority in point in the present case, that it is entirely satisfactory; and that it is owing to something like bad faith that it has not been properly cited and relied upon.

MR. ATTORNEY GENERAL. I should be very sorry to say that.

MR. BARON BRAMWELL. You do not say so, Mr. Attorney.

MR. ATTORNEY GENERAL. No, but I think your lordships must be very well aware in this country of the existence of numerous cases, in which the doctrine which has been laid down upon a certain subject has stood perfectly well, although other points determined in the same case are not so supported; and if I may venture to say so, it seems to me that the court were in so great a hurry to travel there to what they thought the

substantial question, that they do not go by quite a satisfactory road in that journey; that is all. I was going to refer to the other book which I mentioned, a case which arose upon one of the American slave trade acts. The act contains large words. It prohibited under penalties, including the condemnation of the vessel, any "citizen or citizens of the United States, or any other person or persons," from doing these things; no such person "shall for himself, themselves, or any other person or persons whatsoever, either as master, factor or owner, build, fit;" I rather think the word "out" has slipped out there, for I find it everywhere else "fit out, equip, load, or otherwise prepare any ship or vessel in any port or place within the jurisdiction of the United States, nor cause any such ship or vessel to sail from any port or place whatsoever within the jurisdiction of the same, for the purpose of procuring any negro, mulatto, or person of color from any foreign kingdom, place, or country, to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor; and that if any ship or vessel shall be so built, fitted out, equipped, laden, or otherwise prepared for the purpose aforesaid, every such ship or vessel, her a ship was not to be fitted out for the purpose of procuring negroes to be transported tackle, apparel, furniture, and lading, shall be forfeited." Now, take the word fit out; and sold as slaves. An indictment was framed upon that act, and a case upon it is reported in the 12th Wheaton's Supreme Court Reports, at page 460; the United States *vs.* Gooding. The indictment was framed upon that act, the first count of which charged fitting out alone; that Gooding, being a citizen, and so forth, did on a particular day "fit out for himself as owner in the port of Baltimore, within the jurisdiction of the United States, a certain vessel called the General Winder, with intent to employ the said vessel in procuring negroes from the continent of Africa to be transported to Cuba, contrary to the true intent and meaning of the act." There were other questions with which I need not trouble your lordships. A question arose upon that count, which charged him with fitting out, only, this schooner with intent to procure negroes, &c. Instructions were given, or rather were asked for, of which the third, mentioned at page 466, was this: It was demanded by the defendants; they moved the court for its opinion upon those points. The third instruction was this; "That the first count charges a fitting out in the port of Baltimore, which, according to the true legal interpretation of the words in an indictment, means a complete equipment, and that evidence of a partial preparation here, and a further equipment at St. Thomas, will not support the charge contained in the count." Then the judgment of the court, upon that instruction, is expressed in these terms at page 472: "The third instruction turns upon the point, whether the fitting out, in the sense of the act of Congress, means a complete equipment, so that a partial equipment only will extract the case from the prohibition of the statute. This objection appears to us to proceed from a mistaken view of the facts applicable to the case. If the vessel actually sailed on her voyage from Baltimore, for the purpose of employment in the slave trade, her fitment was complete for all the purposes of the act. It is by no means necessary that every equipment for a slave voyage should have been taken on board at Baltimore; or, indeed, that any equipments, exclusively applicable to such a voyage, should have been on board. The presence of such equipments may furnish strong presumptive proof of the object of the voyage, but they do not constitute the offense. The statute punishes the fitting out of a vessel with intent to employ her in the slave trade, however innocent the equipment may be, when designed for a lawful voyage. It is the act combined with the intent, and not either separately, which is punishable. Whether the fitting out be fully adequate for the purposes of a slave voyage, may, as matter of presumption, be more or less conclusive; but if the intent of the fitment be to carry on a slave voyage, and the vessel depart on the voyage, her fitting out is complete, so far as the parties deem it necessary for their object, and the statute reaches the case. But we are also of opinion that any preparations for a slave voyage, which clearly manifest or accompany the illegal intent, even though incomplete and imperfect, and before the departure of the vessel from port, do yet constitute a fitting out within the purview of the statute." And some earlier authorities are referred to. Now, the principles of the decision upon that count seem to me to be strongly applicable to this subject.

MR. BARON CHANNELL. What was the order of the court?

MR. ATTORNEY GENERAL. They refused the instruction asked for by the defendant. I think I gave your lordships the reference, 12 Wheaton, page 460; there were other counts and other questions with which your lordships need not be troubled.

MR. BARON CHANNELL. Was there in that, as in the other case, an instruction framed by the prosecutor, the district attorney of the United States?

MR. ATTORNEY GENERAL. I think not. At page 479 I find the certificate of the opinions of the court, first, with regard to the admissibility of evidence; then, that the opinions prayed for by the counsel for the defendants in the rest of the sixth prayer, which are not mentioned here, were correct in law and ought to have been given; that the opinions prayed for upon every other prayer were incorrect in law and ought to be refused; and fourthly, that certain objections to the form and sufficiency of the indictment were not available at the time they were taken. That seems to be the whole.

My lords, I have but one observation to make upon the reference made by my learned friend, Mr. Mellish, yesterday, to the decree of the judge of the Vice-Admiralty Court of the Bahamas in the case of the *Oreto*. There was no evidence whatever, as I understand it, to satisfy the court that the ship was intended for any but a mercantile purpose, and under those circumstances that which was relied upon as the *corpus delicti* was putting on board a certain number of blocks which it was alleged were of a kind and number which could only have been intended for a belligerent object. That being the only form of proof by which the warlike purpose was to be established, the court of course examined it, and finding upon the evidence, pro and con, the master coming forward to give his evidence, that it was not proved that there was either a number or a kind of blocks which were unsuitable to a merchant vessel, and the rest of the evidence being held to be consistent with the intention to employ her as a merchant vessel, the case simply failed upon the evidence; there was no evidence of intent which would satisfy the judge, the particular equipment being not of a character to be a proof of a warlike intent, or to be in itself illegal. And your lordships will recollect these circumstances; the ship sailed from England fully equipped, and nothing was done in the Bahamas except putting those blocks on board; and therefore it would be a case of furnishing, at any rate of the lowest degree; and it would require clear proof of the illegal intent to bring furniture, which was *ancipitis usus*, under the act. The furniture was itself of an innocent kind, and the employment of the vessel was not proved to be intended otherwise. No doubt the conclusion come to in that case, in such a state of evidence, was unavoidable.

I need not trouble your lordships by going at any great length into the observations which my learned friend, Sir Hugh Cairns, made, which did not seem to me to indicate any great amount of confidence on his part in his case, upon the supposed negative argument arising from the fact, that until the present time there have been no prosecutions in this country under the foreign enlistment act. We know, as a matter of fact, that there have been no considerable wars; and I presume that when the act was passed, when the war with the South American republics was going on, the passing of the act had the effect of deterring the people of this country from doing the things against which it was directed. As regards subsequent applications of it, in some of the wars which have taken place on the continent since that time, we have not been absolutely neutral. And, therefore, I do not think it has been yet shown, that there have been cases which could very well have led to these questions coming forward.

My lords, my learned friend referred to the *Terceira* case, which was a case turning upon the propriety of our intercepting out of our own dominions—in truth, in the dominions of Donna Maria, whom they were intended to serve—an expedition which sailed from Plymouth carrying unarmed troops. If the case had assumed, which it did not, a legal aspect, I should still have said that it would have been no authority whatever upon this subject; for nobody can read the history of it without seeing that it was clear to demonstration and beyond doubt that the foreign enlistment act had been infringed in that instance. Those ships were used as transports to convey a number of troops to an island which had been the subject of contest, and which was at that moment in the possession of Donna Maria; the other islands of the Azores being in the possession of her opponent; and it being the object of the war to recover those islands. Of course, if it is illegal to fit out a transport for troops, it does not matter whether the troops carry their arms with them or not. And, therefore, in the *Terceira* case, it was the starting point of the whole question, that there had been a direct and clear violation of the foreign enlistment act. The only question was, whether, the ship having slipped out, the government were justified in pursuing her and not permitting her to land her troops where she otherwise would have done. That is a question with which, I apprehend, we have nothing to do now.

Now, my lords, I pass to the subject of the summing up of the learned judge. I think it will be convenient that I should refer to that before I refer to the evidence, treating the question of verdict against evidence as distinct from it afterward.

My lords, the objections which we have to make to the direction of the learned judge to the jury are these: that his lordship did not explain to the jury the meaning of the foreign enlistment act, except in a manner which, if the interpretation which we place upon it is correct, was an erroneous way of explaining it; and therefore that the language of his lordship, if it does not bear our interpretation, was calculated to mislead, and doubtless did mislead the jury; and if it does bear our interpretation, it was a wrong direction to the jury; and that, under any circumstances, there was an absence of the assistance which, in the interpretation of this act of Parliament, the jury ought to have received from the learned judge.

Mr. BARON BRAMWELL. Before going into the particular direction of my lord, let me see whether I rightly understand you as to the principles which you have laid down. You say that any equipment with intent that the vessel should cruise will do, whatever the character of the equipment may be, do you not?

Mr. ATTORNEY GENERAL. Yes, my lord.

Mr. BARON BRAMWELL. Allow me to ask you, what are we to understand as the meaning which you put on the words, "with intent that she shall cruise?"

MR. ATTORNEY GENERAL. Those are not precisely the words, my lord; it is "with intent that she shall be employed in the service of a foreign government to cruise and commit hostilities." I cannot help thinking that the interval is a very important one between the words "with intent" and "to cruise." The intent is to be that the ship shall be so employed by a foreign government, not, I apprehend, that she shall cruise instantaneously.

MR. BARON BRAMWELL. Let me withdraw my question, which was perhaps a wrong one, and put it correctly; that is to say, "with intent or in order that such ship or vessel shall be employed in the service of any foreign prince" with intent to cruise and to commit hostilities; do I understand you to say that that would comprehend the intent, not that she shall immediately be employed to cruise or commit hostilities, but that after she shall have gone elsewhere, and received an addition to her equipment, she shall cruise?

MR. ATTORNEY GENERAL. I have no doubt, my lord, that it would cover that case.

MR. BARON BRAMWELL. You say that it covers that case as well?

MR. ATTORNEY GENERAL. Certainly, my lord; the words are not that she shall immediately be employed and cruise, but that she shall be employed in the service of a foreign prince to cruise and commit hostilities. Whatever the foreign prince does to her in the meantime to make her better fitted for that service, still she is ordered by him with the intent that she shall be equipped and fitted for that service, and she is furnished by those who intend her for such employment.

MR. BARON BRAMWELL. It may be not an equipment with intent that she shall at once cruise, but an equipment with the intent that she shall be employed and cruise in the service of a foreign prince.

MR. ATTORNEY GENERAL. Yes, my lord; and if any force is to be attributed to the disjunctive copula which separates "arming" from the other words, as it is evident that she could not cruise till she was armed; she might offend against the act in other respects, although she would not be in a condition to do that. I think I have already gone through that subject more or less.

MR. BARON BRAMWELL. I only wanted to have your opinion expressed as concisely as possible.

MR. ATTORNEY GENERAL. It appears to me, my lord, to be very important in that point of view to remember that you do not couple the cruising with the immediate intent of the person who is doing the prohibited act. What he does, is equipping, attempting, procuring, or aiding in equipping, in order that the ship shall be employed in the service of a foreign prince to cruise. That foreign prince will give the orders, and tell her where she shall cruise, when she shall cruise, and how she shall cruise; and then, from the moment when she comes into his possession, decide what may be the additional equipments which it may be proper to give to her for the purpose of arming her. It cannot be supposed that this was intended only to touch a case where the foreign prince who orders her to be made for his purposes of war is dealing upon the footing that he is going to use her instantaneously.

At this point I think I may as well supply a vacancy in my argument, for I am now brought back upon the argument with regard to intent. I did not say much upon that before. My learned friend, Sir Hugh Cairns, has asked us again and again whom the government have fixed upon, whose intent it was that we point to. In substance, if our argument is right, we show the intent of the Confederate States, and of their agents here; and this makes it, upon our showing of the case, the Confederate States who are the masters of the intent, who have the intent, through their different agents in this country; agents sent over on their behalf, for their purposes; their financial agents, and agents in warlike matters. Captain Bulloch, and Messrs. Trenholm and Company, for example, and Mr. Hamilton, are admitted to be their agents; they ordered the vessel to be built as a gunboat; of course such men intend the obvious consequence of their own acts, that she should be used as a gunboat in the confederate service. And the confederates being at war, it is perfectly clear that she must have been intended to be used to cruise and to commit hostilities against the persons with whom they are at war.

Now, my lords, I come to the charge. His lordship began by noticing the circumstances under which the ship was seized. The charge begins in the printed book with page 227.* The earlier parts I shall not be obliged to read to your lordships at length, I only wish to show how far they throw light upon anything which follows. His lordship began by reminding the jury that it was an information upon the part of the Crown, "following a seizure by some officers of the government, taking possession of a vessel which was in the course of building at Liverpool; it had not been completed." That of course, nothing which is intercepted before the attempt is completed can be. "It is admitted that it was not armed." When his lordship spoke of its being in the course of building, remembering the evidence, we know what was meant; in common parlance, you may call every ship in the course of building while she remains with the artificers at work upon her, whether the furnishing and other fittings have been begun or not. In this case the machinery and other fittings were already on board. "It is

* See page 126.

admitted that it was not armed." And then his lordship refers to the form of the information, and speaks of the absence of a count charging the parties with arming. And then he comes at last to the question whether the vessel, as then prepared at the time of the seizure, was an object of seizure under the act. Then his lordship expresses, in forcible language, the feelings common to us all of regret at the circumstances which have caused such a case to arise. And then he proceeds in this way: "Let us go at once to the business of the moment. The charge is only that there should be a condemnation of the vessel as being properly seized; but that seizure necessarily involves the commission of a misdemeanor. And then the inquiry is and must be, was a misdemeanor committed under the terms of the act of Parliament? If there was, and if the ship has been seized in consequence of that misdemeanor, the information is right, and your verdict must be for the Crown. If there was not, (and I shall presently state to you what appears to me to be the question of fact you have to try,) then the information founded upon the seizure ought to have a different termination, and your verdict ought to be for the defendants." His lordship then observes, that it is necessary that the jury should be "persuaded of the truth of what involves an accusation of crime although it takes only the character of the seizure of a vessel." Of course I entirely acquiesce in that. If I may respectfully say so, I most entirely agree with that part of his lordship's statement. But his lordship has not hitherto approached the question of the construction of the statute.

His lordship arrives at the question with regard to the construction of the statute at page 229; where he says, "Now, gentlemen, with these observations I will go at once to the statute in question, and to points of fact which I think I ought to submit to you. Gentlemen, that statute is one that was passed in the year 1819, upon which no question has ever arisen in the courts of justice, and it is here before you for the first time. But it so happens that we have expositions of the statute by decisions in the American courts, which we very justly pay the greatest respect to. For two of the most celebrated writers upon law, Mr. Chancellor Kent and Mr. Justice Story, are Americans, and they have contributed certainly more to render law a science, and to render the pursuit of it, I was almost going to say, captivating, than any writers on this side of the Atlantic for thirty or forty years past." My lord, I think we shall all agree with that, at all events. But I cannot help also saying, that some of our young friends at the bar, who are rising up at the present day, and showing the fruits of the greater attention which is now being paid to legal education, appear to me to be likely to tread worthily in the steps of these American writers. His lordship goes on: "Now I find in the Commentaries of Chancellor Kent this statement. He says, that on certain occasions it was contended on the part of the French nation, that neutral governments were bound to restrain their subjects from selling or exporting articles contraband of war to the belligerent powers, but it was satisfactorily shown on the part of the United States that neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent powers contraband articles, subject to the right of seizure *in transitu*. This right has since been explicitly declared by the judicial authorities of this country. The right of the neutral to transport, and of the hostile power to seize, are conflicting rights; and neither party can charge the other with a criminal act. The cases that are referred to in the note are those very cases that have been mentioned at the bar; two of them by Sir Hugh Cairns and another, I think, by the learned attorney general. Gentlemen, that is the expression of Chancellor Kent in his Commentaries upon American Law, which are very well worth reading by anybody who cares to study law at all, even English law, because they contain unquestionably one of the best and ablest, not the worse for being the shortest, account of the belligerent rights, and the rights of nations, in the very beginning of Chancellor Kent's Commentaries. Now, in the case of the *Independencia*, Mr. Justice Story, in giving the judgment of the Supreme Court of the United States, says thus: 'But there is nothing in our law or in the law of nations that forbids our citizens from sending armed vessels as well as munitions of war to foreign parts for sale. It is a commercial adventure, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation.' These, gentlemen, are authorities which show that where two belligerents are carrying on war, the subject of a neutral power may supply to either, without any breach of international law, and certainly without any breach of the foreign enlistment act, (and it does not say a word about it,) all the munitions of war, gunpowder, every description of fire-arms, cannon, every kind of weapon, in short, whatever can be used in war for the destruction of human beings who are contending together in this way. Well, gentlemen, why should ships be an exception? In my opinion, in point of law they are not."

Now, my lords, I am not going to insist upon that. Of course we know that his lordship did not mean that to apply to the foreign enlistment act. I do not think that it would be right to suppose that the jury would necessarily have understood that his lordship, in saying "Why should ships be an exception?" was then referring to the foreign enlistment act. He had mentioned that the foreign enlistment act did not

touch other contraband, but we cannot suppose that that, standing alone, would have been misunderstood. The expression clearly referred to the general rule of international law, independently of the foreign enlistment act. I cannot help observing, however, that unless it were made clear by subsequent expressions, even the passage I have read had a misleading tendency; because it appeared to make this the starting point for the inquiry; it said, All these things are lawful by international law; there was no reason in the world why ships should not be as lawful as anything else. I say, if the jury did not find anything in the subsequent part of the statement which pointed out the distinction between the case of a merely commercial adventure in contraband—sending guns, or anything else, for sale abroad—even ships of war, which, in the case of the *Santissima Trinidad*, Story said was lawful—I say, if no distinction were afterward drawn between that case and the case of a ship fitted out by a shipbuilder in this country directly for a belligerent, there would be a misleading tendency. It is of course one thing to sell as a commercial transaction, when there is only one party in the matter, and that the merchant, who has trade only in view; but quite another thing, when we have by the aid of others, (and of course these things must be done by the aid of instruments in a neutral country,) a belligerent power concerned in the equipment of a ship; and you must distinguish an adventure of this kind from a commercial adventure where there is only one party—the merchant, who is simply making the article, and selling it upon speculation.

LORD CHIEF BARON. What is the doctrine laid down by the attorney general?

MR. ATTORNEY GENERAL. That I consider that no human being can object to the statement, considered merely as a statement of international law.

LORD CHIEF BARON. What I ask is, what is the doctrine laid down by the attorney general upon this part of the case. Of course, I mean the late attorney general.

MR. ATTORNEY GENERAL. The late attorney general I apprehend entirely agreed, as all persons must agree, with the statement of international law generally, which was made by your lordship there, with respect to merely mercantile dealings in munitions of war.

LORD CHIEF BARON. He did not differ, you know, from anything. I mean can you point out any part of his statement, either in opening or in reply, where there is a single proposition clearly and distinctly laid down upon any matter connected with the subject we have to discuss.

MR. ATTORNEY GENERAL. I think I can; most decidedly, my lord. I think you will find that the view of the subject I have been contending for is, both in opening and reply, stated by the late learned attorney general.

LORD CHIEF BARON. Will you point out the passage.

MR. ATTORNEY GENERAL. I will take the last first—at page 226* the attorney general says this, "All I ask you to do is this, you will take the law, so far as it affects your decision, of course, from my lord. The facts you will judge of on the evidence, no doubt availing yourselves of such observations on these facts as the great experience and knowledge of my lord will suggest to him, or enable him to make available to you. I ask you to give your conclusion in this case on the evidence, and I will state at once what I intended to have stated a little earlier, that so far I agree with my learned friend that the intent must be an intent of one or more having, at the time, the means and opportunity of forwarding or furthering such intent by acts. I agree that anything else, called an intent, or that which would be called an intent in the mind of any person not of this description, must be treated properly as a mere wish, imagination, or desire. By 'intent,' undoubtedly the act means practical intent."

LORD CHIEF BARON. That is a statement that by "intent," the act means practical intent.

MR. ATTORNEY GENERAL. Yes, my lord. Then he goes on to say that here you have various persons.

LORD CHIEF BARON. I must say that I do not think that that answers my question.

MR. ATTORNEY GENERAL. There is a very long argument on the law, as opposed to the law argued upon by Sir Hugh Cairns.

LORD CHIEF BARON. That is not what I asked for. What I asked for is this: can you point out, either in the opening or in the reply, any proposition of law clearly and distinctly laid down for the direction of the jury, or for the assistance of the judge.

MR. ATTORNEY GENERAL. At page 199,† which comes after a considerable argument upon the law as opposed to my learned friend, he says, "The next contention of my learned friend was this, that to bring the case within the statute, the vessel described in the seventh section must be a fully armed vessel issuing out of a port. Now, I cannot of course agree to that argument, or adopt that view of the section of the statute, because it is upon the surface of the statement in the first sentence which I addressed to the jury, that this was not an armed vessel." Then he says, "I will come hereafter to the arms that were probably intended to be put on board her by-and-by, but at the time of the seizure the vessel was in the state that I described, built for warlike purposes, and for those only, but not having received any armament on board.

* See page 128.

† See page 111.

Now, addressing myself to this point, I have no doubt your lordship has observed that those various words (and they are numerous) which are used in the statute, such as 'equipped,' 'furnished,' 'fitted out,' 'armed,' and so on, are used, not conjunctively, but alternatively." Then he again repeats that it is used disjunctively, and then your lordship says, "My present impression is that they all mean precisely the same thing." Well, of course it was not for the attorney general to argue with the bench.

LORD CHIEF BARON. It might not have been for the attorney general to have argued with the bench, but if he differed from that which I stated, it was his duty to have said so.

MR. ATTORNEY GENERAL. He had just said so.

LORD CHIEF BARON. This is a point upon a question in discussion, on which the attorney general does not lay down a single proposition.

MR. ATTORNEY GENERAL. Yes, my lord.

LORD CHIEF BARON. No doubt there was considerable difficulty. The question was, in these courts, entirely new, there is no doubt about that.

MR. ATTORNEY GENERAL. My lord, I cannot but think that your lordship will find upon a study of the attorney general's speech—

LORD CHIEF BARON. I assure you, Mr. Attorney General, that I have taken the greatest pains. At the trial I took the greatest pains, and I invited the attorney general, as it were, to allow us together to see what was the meaning of the act, and I could not then discover, and I have not since been able to discover, a single clear intelligible proposition of law laid down by the late attorney general at that trial.

MR. ATTORNEY GENERAL. I think your lordship, with great deference, does less than justice to the late attorney general by that remark.

LORD CHIEF BARON. I am now asking you for any instance of the kind. You have referred me to two passages, and I think without success. If you can refer me to a third, I shall be much obliged to you.

MR. ATTORNEY GENERAL. I will endeavor to find something more. At present I wish your lordship to see what remains of that passage. The attorney general had argued that it was in the disjunctive sense, and immediately before that your lordship was good enough to make an observation. "They are used conjunctively in the preamble and disjunctively in the enacting clauses." Then the attorney general says: "Yes, my lord, and I shall show your lordship good authority that the true construction, as I understand it, whatever may be the language of the preamble, is disjunctive. It is used disjunctively." If that is not submitting that to be the true construction, I do not know what is. Then your lordship says, not as asking for any discussion from the attorney general, who I apprehend would have understood his position toward the court, if he had replied upon your lordship, when your lordship told him what your impression was—then your lordship interposes an expression of your present opinion, and then the attorney general goes on: "My lord, there are other material words to which I will call your lordship's attention. It is not only a violation of this section that a person shall equip, or fit out, or arm, or furnish; but if he shall attempt, or endeavor to do so, or shall procure the thing to be done, or shall knowingly assist or be concerned in aiding with intent, therefore any one of those, or the endeavor, or being concerned in the attempt to do any one of those, as I submit to your lordship clearly, on the terms of this section, would bring the case within its operation. That would be a matter for your lordship's direction to the jury. But if one might, in addressing the jury, advert to the consequence of such a construction being adopted, it would be very easy to show that if it were to be adopted on authority the foreign enlistment act would be a dead letter, and might as well be thrown into the fire."

LORD CHIEF BARON. That is merely arguing that it must be construed in a certain way, and that otherwise the object of the act would not be accomplished. Mr. Attorney General, I think really there is not, either in the opening of the case or in the reply, any single clear proposition of law with respect to the foreign enlistment act applicable to the case then before the court. The discussion now and upon this occasion has given rise to a great deal more of research and of learning and of distinctiveness, of which your own address to the court has been a very (if I may be allowed to say it) bright example; but at the time when you are commenting upon the shortcomings of the judge who tried the cause, permit me to say that I endeavored to get from the late attorney general at the time what assistance might be got. I said: What is the clear, distinct proposition for which you are contending? I endeavored to get it, but in vain. I looked for it then and I have looked for it since, and I have read the whole of the proceedings over and over again, but all in vain.

MR. ATTORNEY GENERAL. I am to be followed by friends of mine, who will have an opportunity of supplying any passages which they may think fit to refer to upon that subject in addition; but, perhaps, it would be wiser for me, although my impression is not the same as your lordship's, to say that I understand the impression of my learned friends upon the other side to be the same as my own; for it will be found upon the notes of what they said in addressing your lordship that they understood me to lay down the same proposition which was laid down at the trial by the late attorney

general—they stated my proposition clearly enough, that any kind of equipment would be sufficient, provided it were done with the forbidden intent; and I am pretty sure, although I have not got my finger upon it, because I was not quite prepared for any reference by your lordship to that speech—I am under a strong impression that before the case is at an end something more definite than has been yet produced will be produced to your lordships upon that point. The exceptions which were stated at the trial certainly show—but, however, that was after the verdict; therefore, I will not refer to it. I will not pause upon that, and I am sure your lordships will do me the justice to suppose that I should be anxious to vindicate myself from any suspicion of having insufficiently explained the meaning of my learned friend, the late attorney general, of whom I must say, since he has been referred to, that I do not think it was ever given to any man to act under a more honorable and upright, or more accurate and judicious colleague than I found it to be my lot when I acted under him; and although under other circumstances to fill the position which I now do might have been an object of ambition to me or any one else, yet the circumstances under which I fill it——.

LORD CHIEF BARON. Whatever tribute you are disposed to pay to the late attorney general, I believe every one who knew him will join in. I knew him from going on the same circuit, before he became a law officer of the Crown; and, undoubtedly, a more honorable, and, I believe, a more honest man, a person of more thorough integrity, or a more high-minded man, never existed at the English bar. Still, I must say that I am not at all surprised that you do not immediately answer the question, because I myself, at the time of the trial, almost implored him to lay his mind alongside of mine and let us see what was the meaning of the act, and I got no assistance whatever. I have since endeavored to obtain that assistance. I have looked over both the opening and the reply, and I can find no distinct proposition of law laid down in the manner in which you have so ably done it both to-day and yesterday. I find nothing of the sort. I am not surprised at it, because the subject was undoubtedly entirely new.

MR. ATTORNEY GENERAL. I was going to say, my lord, your lordship will believe that in any observations which it may be my duty to make in reply to your lordship upon this occasion, that I make them with the full knowledge and consciousness that your lordship was obliged to deal with a difficult subject without that opportunity which we all now have had of equipping our minds upon it, if I may use your lordship's own expression; and if my friend the late attorney general failed to present to your lordship's mind that view of the law which certainly we thought had been sufficiently conveyed, and for which he was contending, it may not be wonderful if in some things your lordship may have omitted to make observations which you would have made, or may have made observations which your lordship would not have made had it been otherwise. But still, my lords, I am bound to show that the actual tendency of what fell from the court, if my argument on the law is correct, was to mislead the jury on the subject of the law. As I said, I have no exception whatever to take, when properly understood, to the passage which I have just read beyond this, that I do not think it was truly relevant to the matter in hand, and that, being introduced as it was, it would naturally appear to the jury to be relevant, and would be connected in their minds with other and ulterior observations which fell from the bench.

LORD CHIEF BARON. What is that you are referring to?

MR. ATTORNEY GENERAL. The proposition in which your lordship speaks of the general right to carry contraband of war. I think that was not the question; it was a point which did not conduce much to the elucidation of the question. Everything that was stated was quite accurate, and it might, of course, have been made clear in the sequel that it was not meant to be taken as a rule for the determination of the question; but, as the sequel proceeded, I cannot but think that it may have had some influence upon the mind of the jury with regard to the way in which they were to interpret the direction they received as to the law from your lordship. Then your lordship proceeds thus—I am reading from page 230:—“Presently I shall have to put to you the question of fact about the Alexandria, which you will decide. The foreign enlistment act”—I beg your lordships' particular attention to this passage of the summing up; because the jury must have understood that the learned judge did direct them as to the construction of the act; and I own I think it will be found that there was either an erroneous construction, or an omission to give the direction which the learned judge probably intended to give. He says, “The foreign enlistment act it is now necessary for me to advert to in order to tell you what is the construction which I put on the seventh section, which alone we have to do with on the present occasion.” After these words it was quite impossible but that the jury should have understood your lordship as telling them what the construction was which your lordship did put upon the seventh section. Therefore, what followed must have been applied by them as intended to convey to their minds your lordships' construction of the seventh section; and if it did not convey that construction they must have been misled by it.

That is quite clear. Then your lordship states the terms of the section, and refers to the title, and to the preamble, and to the seventh section, and then your lordship reads it. Then at the bottom of page 230* the question which your lordship proposed to state is mentioned, not exactly in the same terms in which it was afterward put, but in terms which I cannot but think were less distinct, to say the least, than they should have been, in order to convey a true and correct impression of the real question at issue. "Now, gentlemen, the question that I shall propose to you is this: whether you think that this vessel was merely in the course of building for the purpose of being delivered in pursuance of a contract, which I own I think was perfectly lawful; or whether there was any intention that in the port of Liverpool or any other English port (and there is certainly no evidence of any other) the vessel should be equipped, fitted out, and furnished, or armed for the purpose of aggression." Now I quite agree there that although the copulative "and" is used, in "equipped, fitted out, and furnished," you have the disjunctive "or" before "armed." What are the two propositions contended for; and what is the alternative stated there? Whether they think the vessel was merely in a course of building for the purpose of being delivered in pursuance of a contract entered into, if so, perfectly lawful; or, on the other hand, not being built to be delivered in pursuance of the contract, but to be employed in the port of Liverpool for the purpose of aggression.

LORD CHIEF BARON. That is instead of reading the whole verbiage of the statute.

MR. ATTORNEY GENERAL. No doubt, my lord. I agree that to read the whole verbiage of the section would not have thrown any light upon the subject to any one's mind. I think what might have misled the jury is this: there seems to be a distinction made between a thing that has been done in pursuance of a contract, and that which is being done for the purpose of aggression. The jury are not told it may be for the purpose of aggression within the meaning of the statute, whether done without a contract or with a contract.

LORD CHIEF BARON. Nor was it necessary to tell a special jury that.

MR. ATTORNEY GENERAL. Speaking with the respect I unfeignedly feel—

LORD CHIEF BARON. I say that it is not usual in this court, or in other common law courts, to expect a perfect treatise on the law from the judge presiding at the trial.

MR. ATTORNEY GENERAL. I know it, my lord. That direction which the jury was taught to expect from your lordship is not to be found in the passages upon which I am obliged to make these observations, and although it would be far from me to offer any verbal criticism that did not fairly go to the general tendency and substance of the charge, yet when we do find expressions of that sort which require explanation, and not only once but reiterated afterwards, and an absence of that instruction which the jury were taught to expect as to what was the real meaning of the act, I think we cannot but see that they must have been misled. That is followed by a passage which enlarges on the same point, and, I must say, contains a proposition to which, with great respect, I must demur as exceedingly inaccurate.

MR. BARON CHANNELL. How would you understand the passage you have just read if the second alternative had come first? I leave to you the question whether there was any intention in the port of Liverpool, or in other any English port, that the vessel should be equipped, fitted out, furnished, or armed for the purpose of aggression, or whether, that not being the intent, she was merely in course of building for the purpose of being delivered in pursuance of a contract. In that case, I think it would be perfectly lawful.

MR. ATTORNEY GENERAL. There could be no possibility of any exception being taken to the correctness of that view. So interpreted, there can be no exception taken to the correctness of the language; but your lordships will see that the language as it stands does not express that it was to be a contract without any purpose of aggression. I have no doubt that might have been the meaning of the learned judge. But your lordships will find in a subsequent passage which follows, observations are made on the efficacy of a contract in this country which I must take exception to as being erroneous.

MR. BARON CHANNELL. I want to go with you as you go along.

MR. ATTORNEY GENERAL. I am prepared to acquiesce in what your lordship has said, that if the sentence had been inverted and the words added, "contract without any purpose of aggression," one would not take exception in substance to that statement; because the words, "for the purpose of aggression," might have been perfectly consistent with my argument upon the statute. But now, my lords, what follows is certainly calculated to make that reference to a contract receive a somewhat different sense, in appearance; for his lordship goes on thus: "That is the question. Now, with respect to the question of building, it is certainly remarkable there is not a word said about it. It is not said that you may not build vessels for the belligerent power. There is nothing suggested of the kind, and clearly by the common law and by the passages I have read to you, surely, if from Birmingham either state may get any quantity of destructive instruments of war, and if from the various parts of the kingdom where

* See page 128.

gunpowder is made, they can obtain any quantity of that destructive material, why should they not get ships? Why should ships alone be themselves contraband? Now, gentlemen, I will state to you why I put the question I did to the attorney general; I said, do you mean to say that a man cannot make a vessel, intending to sell it to either of the belligerent powers that requires to have it, to that one who will give him the largest price for it? Is that unlawful?" That is the very case of the Santissima Trinidad, the ship *Independencia*. "The learned attorney general, I own, rather to my surprise, declined giving an answer to a question which I thought very plain and very clear."

Now, if I may take the liberty of saying so, the attorney general appeared to me to answer in substance this: If your lordship's case is one which means that there is no intention to do the thing which the act prohibits, then I do not say that it is unlawful, but I would rather meet the case when I know the circumstances—and I take it that the attorney general meant this—it is not every case in which a man does that which these words describe, which I should be prepared to admit to be lawful; because there may be an act which has such an appearance, but which is really the result of concert with one of the belligerents, which comes from their order, and is done at their instigation; and which, although it has the elements which are there mentioned, may also have other elements which will very much alter their effect. Therefore, the learned late attorney general preferred not to deal with a case which he said was different from that which was then before the court, reserving the question when such circumstances might arise. Perhaps it may be regretted that he did not say at once what I am prepared to say now, that in the case of the *Santissima Trinidad*, it was held that such a ship might be taken abroad for sale, provided it were done without any previous concert with any intended purchaser; and I should not argue that this statute would prevent such a thing as that being done here. Then his lordship says he desired to have his mind instructed by the learned attorney general. "The learned attorney general, I own, rather to my surprise, declined giving an answer to a question which I thought very plain and very clear. You saw what passed. I must leave you to judge whether there was anything improper in the manner in which I (so to express it) communed with the attorney general on the law, so that we might really understand each other, and that I might have my mind instructed, fitted out, equipped, and furnished, if you please, by the contents of his. Gentlemen, the learned attorney general declined to answer that question. But I think, by this time, having read to you these matters, you are lawyers enough to answer it yourselves;" that is, he had read those passages of international law from Kent and Story and other books. "I think that answer ought to be 'Yes, a man may make a vessel;' nay, more, according to the authority I have just read, he may make a vessel and arm it and then offer it for sale." That was a perfectly accurate reference to the authority in the case of the *Independencia*, for that ship which was the subject of the sale, and of that commercial adventure, was taken out fully equipped and armed, and even with the crew on board who, by a transfer of their engagements, afterward remained upon her as a ship of war. So that it was most accurate to say, he might not only make the ship, but that he might make it and arm it, it being not in truth ordered or fitted out with the intent of being employed for warlike operations in the service of any foreign belligerent, because the foreign belligerent was no party to the fitting out or arming before or at the time when it was going on. His intention was not formed then, and could not exist, and the person who could alone have any intention under the circumstances, having merely a mercantile intention, took the commodity to the best market he could find for sale. So far that was right. But now I will ask your lordships to observe what follows, which, with the sincere respect I always feel for his lordship, seems to my mind a proposition which his lordship would now desire to qualify, and to correct, in all probability; but which must have had a very misleading influence on the minds of the jury. His lordship proceeds thus: "But I meant, gentlemen, as I said then, if I had got an affirmative answer to that question, to put another. If a man may make a vessel, may build a vessel for the purpose of offering it to either of the belligerent parties who is minded to have it, may he not execute an order for it?" Now observe, my lords, that would be the same thing which he might sell, that is the ship, and the ship armed, because he may make and sell the ship ready armed and equipped; and of course the question will relate to the same matter. His lordship proceeds: "Because it seems to me to follow as a matter of course, if I may make a vessel, and then say to the United States, I have got a capital vessel; it can easily be turned into a ship of war; of course I have not made it a ship of war at present." That he could not do. He is not the belligerent; he has no power to do that. "Will you buy it? That is perfectly lawful. Well, if that is lawful, surely it is lawful for the United States to say, 'Make us a vessel of such and such description, and when you have made it send it to us.'" I take exception to that. I say that is absolute positive error, and that it might mislead, and probably did mislead, the jury in a most material degree. His lordship had said he was going to tell them his view of the construction of the seventh clause of the statute; but the statute strikes at that, while it does not strike the other transaction, provided always, of course, it

was done with the prohibited intent; because the United States coming into this country are masters of the belligerent intention; there is a warlike intention, and if the United States send here and say to a ship-builder "Make us, equip and fit out for us, a vessel of such and such a description," to say that because he might do it as a commercial speculation, and take it abroad and sell it to them, therefore he may execute for them an order for it here, that is precisely to set aside the distinction which the statute introduces. I will demonstrate that in a moment. I will take that very case of the *Independencia*; if that had been done under an order of the government of Buenos Ayres, at Baltimore, which was done without their order, it would have clearly, and beyond possibility of doubt, been struck at by the act, for that ship was fully armed when she left the United States. And if the vessel had been built, equipped, and armed under such circumstances, no human being, under the words of the American statute or this, could deny that the statute was violated. The principle, if good for anything, goes to the full length, that because you may take abroad to sell, as a commercial adventure, a ship built, equipped, and armed to the teeth, and with her crew on board, that what you may do in that way, you may also do in this country, execute an order for the same article from the United States as a belligerent, an order from a belligerent for a ship to be fully armed and equipped.

Now, my lords, I say that there is positive error in that passage of the charge of the lord chief baron, an error most material, which must have been connected in the minds of the jury with the statement which his lordship had previously made when first adverting to the question saying, "It is necessary for me to advert to the act of Parliament, in order to tell you what is the construction I put upon the seventh section, which we alone have to do with on the present occasion." How does his lordship proceed? His lordship proceeds thus: "Now the learned counsel certainly addressed themselves very much to this view of the matter. 'But if you will allow this, you repeal the statute.' Gentlemen, I think nothing of the kind." That is, if you allow the same thing to be done under the order of a belligerent which can be done without his order, you do not repeal the statute. "What that statute meant to provide for was, I own, I think, by no means the protection of the belligerent powers. I do not think their protection entered into the heads of those who framed this statute, otherwise they would have said, You shall not sell gunpowder, you shall not sell guns. There are places that now and then explode in different parts of the kingdom no doubt, and which would have complained very heavily if they had said, You shall not sell powder, you shall not sell arms! Why, all Birmingham would have been in arms. But the object of this statute is this—we will not have our ports in this country subject to possibly hostile movements. You shall not be fitting up at one dock a vessel equipped and ready, not being completely armed, but ready to go to sea; and at another dock close by, be fitting up another vessel, and equipping it in the same way, which might come into hostile communication immediately, possibly before they left the port. It would be very wrong if they did so; but it is a possibility. Now and then it has happened, and that has been the occasion of this statute, no doubt." That last remark is merely an illustration; but, observe, his lordship uses it in connection with this remarkable statement, that whatever might be lawfully sold abroad, if taken abroad as a mere commercial adventure, may be lawfully made here under an order from a belligerent; which he follows up by saying, no doubt it was not the intention of the statute to interfere with the contraband trade; and that would, of course, be in the minds of the jury, with the general statement of the law as to contraband trade, with which his lordship had begun. What follows upon that? If we have got here the instruction which the jury were taught to expect, namely, the construction which his lordship put upon the section, we have clearly got a wrong one. But then what follows immediately? His lordship says that he is not going to put to them the question, as to the purpose for which this ship was intended. He says, "Well, if that is so, let us see what is the condition of this vessel. The vessel was clearly nothing more than in course of building. I do not know what conclusion you would come to as to what service she was intended for. If it became a matter of importance to decide that, it would be a question for you to decide, whether it amounted to more than a strong suspicion, or whether it was so made out to your entire satisfaction so as to justify a verdict in that direction. But, gentlemen, I do not propose to put that to you." So that his lordship did not propose to put to them what we say was the whole question in the case, namely, whether this ship was intended for the belligerent service of the confederates. And, obviously, the jury must have thought the reason why his lordship did not propose to put that question to them was, that it was lawful for a ship-builder to execute any order whatever for a belligerent in this country, notwithstanding the statute, if he might have taken abroad for sale, as a speculation for himself, the same kind of goods independent of the statute.

LORD CHIEF BARON. You will find that that is quite inconsistent with the question that was ultimately put.

MR. ATTORNEY GENERAL. No, my lord, I think not.

LORD CHIEF BARON. I believe, utterly.

MR. ATTORNEY GENERAL. I know your lordship intended it so.

LORD CHIEF BARON. The practice in this court, as I have already observed, is not to proceed in the course which you are now pursuing. I do not mean further to object to it. The question is, was, at last, the true question in the cause put to the jury?

MR. ATTORNEY GENERAL. Your lordship is perfectly well aware that there are many cases which show that, where the interpretation of an act of Parliament is involved, the jury ought to be properly directed by the learned judge as to his interpretation of that act of Parliament. If your lordship had not said, as you did say, that you were going to tell the jury what the construction was which you were going to put upon the seventh section; still I think it might have been expected that the object of the remarks which preceded the question put to the jury would be to explain that construction. I say that, after those remarks, the jury, not having received any information from your lordship as to what was the construction except from the passages which I comment upon, and to which I object, must have understood the general act of Parliament, in which your lordship put the question, in the light of that commentary upon it, which the jury supposed your lordship had been making, and which I must take the liberty of saying we thought you had made, and which I believe every person engaged in the cause also thought had been made. Your lordship says: "But, gentlemen, I don't propose to put it to you, nor do I think it worth while." I think there was a positive error in not putting that question to the jury. We had a right to have the question put to the jury as to what service she was intended for, and undoubtedly your lordship did not intend to put that question. You told the jury that you did not think it necessary to put that question. That would make them understand that, under the general terms of the question finally put in the words of the statute, your lordship did not intend to put that to them. Then your lordship goes on to say: "Gentlemen, I do not propose to put that to you, nor do I think it worth while to follow the learned attorney general through the whitewashing of Clarence Randolph Yonge; because, after all, what he proved seems to me to have the least possible connection with, or effect upon, the real question in this case, which I take to be this: Was the vessel built, or was it merely in course of building?"

LORD CHIEF BARON. There must be some mistake there.

MR. ATTORNEY GENERAL. I think there probably is a mistake.

LORD CHIEF BARON. I am sure I did not express myself so.

MR. ATTORNEY GENERAL. Then, my lord, I will not dwell further on that. I am sure it did not express the meaning that your lordship intended to convey, and, therefore, it is not necessary for me to say anything further upon it. I will not dwell upon that, because, of course, that would be corrected by the form in which the question was finally put. "Now, gentlemen, I present the matter to you in another point of view." Now here is a passage in which your lordship evidently failed to express what you intended to convey, because we know now accurately what your lordship did mean, but no one reading the words which I am going to read (and which I am sure is not an inaccurate expression of what fell from your lordship's lips) would understand them with the important qualification with which we now know they were meant to be understood. They are these: "Now, gentlemen, I present the matter to you in another point of view. The offense against which this information is directed is the equipping, furnishing, fitting out, or arming. Gentlemen, I have looked, so that I might not go wrong, (as we have the advantage of having it here,) at Webster's American Dictionary, a work of the greatest learning, research, and ability; no one can complain that I refer to that. It appears there that 'to equip' is 'to furnish with arms,' in the case of a ship especially it is 'to furnish and complete with arms.' That is what is meant by 'equipping.' 'Furnish' is given in every dictionary as the same thing as 'equip.' 'To fit out' is 'to furnish and supply' as to fit out a privateer; and I own that my opinion is, that 'equip,' 'furnish,' 'fit out,' or 'arm' all mean precisely the same thing. I do not mean to say that it is absolutely necessary, (and I think that the learned attorney general is right in that,) it is not perhaps necessary, that the vessel should be armed at all points." If that language is accurate—

LORD CHIEF BARON. There it is certainly inaccurate.

MR. ATTORNEY GENERAL. Well, if your lordship says so, I am not in a position to verify the language of the report.

LORD CHIEF BARON. The object of that part of the summing up was to point out that a case which the attorney general observed upon in his reply, and which raised a distinction between "fitting" and "arming" was correctly decided.

MR. ATTORNEY GENERAL. Your lordship will pardon me.

LORD CHIEF BARON. Just let me proceed. I had stated my opinion, but I did not lay that down as law. I intended to convey to the jury that that was my opinion, but I read to them the language from the dictionary to assist them in making out the meaning of the words for themselves. I expressed my opinion and nothing more, but then I meant distinctly to point out that I adopted the American decision, that there might be a fitting out without any arming at all, and that so far the two words did not necessarily mean the same thing.

Mr. ATTORNEY GENERAL. We know from your lordship most accurately what your lordship meant to convey.

LORD CHIEF BARON. And what I said.

Mr. ATTORNEY GENERAL. Your lordship will pardon me for reminding you what was the understanding at the time.

LORD CHIEF BARON. What I said was that the jury in that case found that the vessel was actually fitted out although not armed.

Mr. ATTORNEY GENERAL. Are the words, "though not armed," there?

LORD CHIEF BARON. They are in the report, and they are stated in the course of the case. Every time that a matter is mentioned you cannot repeat all that belongs to it. It was perfectly well known and stated that in that case the vessel was found to be equipped and not armed. It is not necessary to observe further upon that now. "They found so most properly, for she actually sailed away with her captain, who afterward turned her into a privateer and she went away in a great measure fitted. The jury found that she was fitted. The question is whether you think this vessel was fitted. Armed she certainly was not." And the other was not armed. The jury were aware of that if they were attending to what was going on, because it was part of the statement in that case that the vessel was not armed.

Mr. ATTORNEY GENERAL. I beg to acquiesce in your lordship's explanation.

LORD CHIEF BARON. "Armed she certainly was not, but was there an intention that she should be furnished, fitted, or equipped at Liverpool?" The information containing nothing about arming at all, it would have been improper to put anything about the arming of the Alexandra. The question which I put was this: Was there an intention that she should be furnished, fitted, or equipped at Liverpool?

Mr. BARON BRAMWELL. I do not know whether my lord will agree to this as the correct view of his summing up, but it seems to me that he in effect said, it is not necessary that the vessel should be armed, but she must have an equipment of a warlike character, so that what you have got to consider is whether she was equipped in that sense. That seems to me to be the effect of my lord's summing up. Do you think it was other than that?

Mr. ATTORNEY GENERAL. Your lordship will see what we understood by it if you will look at what fell from myself just toward the close of the observations at the end of the report, after we had handed up a paper putting down the points which we thought had been ruled, and to which we took objection. One was to the effect that a warlike armament was necessary; and your lordships will observe I said, "Your lordship said the words were the same, that every one of the words required a warlike armament at Liverpool." That is what we certainly understood his lordship to say. I cannot but think that the reference to the dictionary and the statement of his lordship's opinion was unfortunate, if his lordship was relying on the recollection of the jury of the case cited from Peters; in which it appeared in the report that there was not any arming.

Mr. BARON BRAMWELL. I do not understand my lord to say, that he did not give the jury to understand that the equipment must be of a warlike character. I understand my lord to say that he did make that statement. He said, in effect, "If my private judgment governed this matter I should say that the words are identical, and that the case could not be within the act, unless the ship were armed, but I will not tell you that, because there seems to be a doubt about it; still I think it must be a warlike equipment; but that is for you to say."

Mr. ATTORNEY GENERAL. If that is, the view which your lordships will take of the meaning of the summing up, then if by "warlike equipment" was understood, as I think the jury must have understood, an equipment distinct from anything in the structure of the vessel, and not to be considered as a warlike equipment, unless distinctively of that character, although the purpose and character of the vessel was proved to be warlike, then I except to that as an erroneous direction. His lordship said in effect that he did not propose to put to the jury the question for what service it was intended. Your lordship will recollect that. That, of course, was as good as telling the jury.

LORD CHIEF BARON. That is, for what purpose it was ultimately intended.

Mr. ATTORNEY GENERAL. The word "ultimately" was not used. I do not think that your lordship could have meant "ultimately," as distinct from immediately, for this reason, that all the evidence tended to show that it was a contract by the agents of the Confederate States at Liverpool for this vessel to be built, and equipped as far as she could be; there was no evidence to raise any question of anything like a remote or undecided intention in the case. Your lordship said, in effect, that the question of what service she was intended for was immaterial; and it was not proposed to be put. I take the ruling to have been this. Gentlemen, you may believe that this ship was ordered by the Confederate States of America, as a gunboat for this service, but unless you believe that she was intended to leave the port of Liverpool with an equipment of so distinctively a warlike character, additional to those you find, as would enable her at once to commit hostilities, then she is not within the act. If that is your lordship's ruling, we humbly except to it as erroneous in law. And I think, that although

the language with which his lordship concluded is not altogether unequivocal, yet it is properly susceptible of that interpretation; because his lordship says this on page 233,* after stating the evidence of Captain Ingfield, in which the report attributes to his lordship what I do not recollect having heard, and I do not think his lordship did so say, Captain Ingfield said, "It was probably as fit for a yacht as any vessel that was ever built." Now, I think the word "yacht" there is an error, because I am sure his lordship did not intend to misrepresent the evidence. I think it should have been a ship of war, a gunboat, or something of that kind. The evidence is merely this, it might possibly be used as a yacht, not that it is well adapted for that purpose; I think there is some mistake in that. Then, after stating the effect of Captain Ingfield's evidence, his lordship proceeds thus, "In short, what he makes out is, that she might have been built for a yacht or might have been built as a vessel capable of being converted into a war vessel." His lordship must be understood to mean what the witness said, not being changed from a yacht into a gunboat, but being made a complete war vessel by going further, and adding something which had been, according to the original design, intended. "But was there any intention that the port of Liverpool should be made the port of departure for the vessel in that condition?"

Mr. BARON CHANNELL. That is preceded by the words "but the question is."

Mr. ATTORNEY GENERAL. "That she should be, in the language of the act of Parliament, either equipped, furnished, fitted out, or armed, with the intention of taking part in any contest." If that means immediately taking part in any contest and being in a situation to do so at the time, it corresponds certainly with the interpretation which Mr. Baron Bramwell has suggested. "That there was a knowledge that very likely she would be so applied there can be no doubt, as there is when persons send gunpowder." I think I am entitled to say that the evidence was that the Confederate States had ordered her as a gunboat. It is not a question of greater or less likelihood, because persons do not order ships of war except to use them as ships of war.

Mr. BARON BRAMWELL. I take it that this portion of the summing up is favorable to you; I think it is very much so. It says in effect, you may almost take it for granted that everything else is made out; you may take it for granted that she was for the Confederate States, and was ultimately to be applied as a ship of war for the use of the Confederate States, but was she fitted out for that purpose? In my opinion that is leaving the question rather favorably to you. He says if you simply find this vessel was to be fitted out as a vessel of war at Liverpool, then I think you had better find your verdict for the Crown.

LORD CHIEF BARON. I certainly never intended to make any doubt whatever that she was intended for the Confederates.

Mr. BARON BRAMWELL. It assumes that you had established that.

Mr. ATTORNEY GENERAL. That assists my argument exceedingly, because it enables me to take that as a starting point. I think that his lordship's ruling amounts to this, assuming that this ship was built under the orders of the confederate belligerent government, for their service as a gunboat, yet looking at the evidence of what she is now, if you do not believe that she is to receive further equipments on board which will enable her to take part in a contest as soon as she leaves the port of Liverpool, then she is not within the act.

Mr. BARON BRAMWELL. If I may be allowed to say so, my lord may be wrong in the view he took of the act of Parliament, but in my opinion nothing can be more favorable than the summing up for you. "That there was a knowledge that very likely she would be so applied there can be no doubt, as there is when persons send powder." I have no doubt that the word "send" should be "sell." "I take it for granted that there are agents on both sides. One openly buying every munition of war, (and they have a right to do it,) and the subjects of this country have a right to sell to them, and openly carrying them away; the others buying wherever they can, and probably endeavoring to take the blockade or to smuggle in some way or other." It is manifest that my lord assumed that everything was made out in your favor, excepting the one question of whether there was an intention in some part of this country that she should be equipped so as to be in a warlike condition when she left.

Mr. BARON CHANNELL. There is a second paragraph at page 232.† I do not understand the Lord Chief Baron's ruling in that way. He is dealing with the question of fact, which he thinks right to leave the jury. He says, "I do not know what conclusion you would come to as to what service she was intended for. If it became a matter of importance to decide that, it would be a question for you to decide whether it amounted to more than a strong suspicion, or whether it was so made out to your entire satisfaction as to justify a verdict in that direction. But, gentlemen, I do not propose to put that to you." Do you understand by that that his lordship meant that the question did not arise, or that the facts were so clearly in favor of the Crown that it was unnecessary to put that question to the jury?

Mr. ATTORNEY GENERAL. I should have understood that, in his lordship's opinion, the question did not arise; because his lordship uses those words, that if it became a matter

* See top of page 130.

† See page 130.

of importance to decide that, "it would be a question for you to decide whether it amounted to more than a strong suspicion, or whether it was so made out to your entire satisfaction." That does not seem like the language which would be used if his lordship had meant to say, the evidence appears so clear that you will not entertain a doubt upon the subject.

LORD CHIEF BARON. I have nothing to do with that.

MR. BARON BRAMWELL. Mr. Attorney, let me call your attention to the last sentence but one of my lord's summing up: "If you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. If you find that, find for the Crown." That assumes that all the other requisites for a verdict for the Crown were established.

MR. ATTORNEY GENERAL. Unless, my lord, it is to be interpreted as in substance a direction which necessarily leads to an adverse conclusion to the Crown, that his lordship did not think it was requisite to go into the other points.

MR. BARON CHANNELL. It seems to me to make a great deal of difference in your argument in what way you are to understand the words, "Gentlemen, I do not propose to put that to you," because if his lordship, in expressing himself so, meant to lead the jury to suppose that that question did not arise, then they would understand the way in which he leaves the question at last as a leaving that excludes that consideration.

MR. ATTORNEY GENERAL. I own that is the way I viewed it, and view it still, in the interpretation of those words. I think the jury would naturally so understand it, in the final words his lordship uses, although no one can say that leaving the question in the terms of the act of Parliament is not right, provided those terms have been properly explained as far as they should have been; yet when you see there was no other explanation preceding, except that which we have seen; and again, the opposition between equipping, furnishing, or fitting out, or arming the vessel at Liverpool; or, on the other hand, "If you think the object really was to build a ship in obedience to an order and in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it," I think the jury would naturally suppose that the knowledge which the builder and equipper might have of the intention of the confederate government was immaterial, if their business was simply to supply an article of trade.

(Their lordships consulted.)

MR. BARON BRAMWELL. I should think if your construction of the act is right, that there was practically a misdirection, because there is no doubt that the practical effect of the direction was that the mere equipping was not sufficient.

MR. ATTORNEY GENERAL. That is rather my own feeling, and we had never wished to raise it in any other form.

MR. BARON BRAMWELL. Would not that save you the trouble of minutely criticising words which are most wonderfully well reported, although not with strict verbal accuracy? I, for one, am satisfied that this word "send" should have been "sell."

LORD CHIEF BARON. That is not the only inaccuracy.

MR. ATTORNEY GENERAL. Fortunately I had come to the termination of what I was going to say; and there is only one other remark which I will make, and then leave it in your lordships' hands. I cannot help thinking that the last words of his lordship's summing up, in which the question is finally stated, might be misunderstood by the jury in this way: they might be led by them to think that they were to look at the builder, whether his object was to equip and arm, or to build in obedience to an order, and in compliance with a contract; because your lordship will observe that those last words, which are opposed to the others, could apply to the builder only; they could have nothing to do with the confederate government and their agents; leaving it as if the only material intention was that of the builder, whether the builder intended something hostile, or meant to execute the order in the way of trade. I think the jury may so have understood the words, and that it would be a natural construction of them, having regard to the other passages in the charge to which I have adverted and which I have laid so much stress upon. I am, however, satisfied with the way in which it is put from the bench; and, if my argument upon the law is right, that will, of course, be all that I desire to establish.

Now, my lords, I shall fortunately have but little to say upon the remaining part of the case. My learned friend, Mr. Mellish, is, I think, wrong in his law, as to its not being competent to the court to give a new trial in a case of this description on the ground of the verdict being against evidence. My lords, the authorities may seem to be meager, but, such as they are, they tend to show that in the cases to which they apply the rule is a somewhat arbitrary one; that is to say, that the defendant may have a new trial, but the plaintiff cannot, for that is what it amounts to.

MR. BARON BRAMWELL. Allow me to put this question: supposing my lord was right in the question which he put to the jury, and that you are wrong in your explanation of the statute, would you still say that the verdict was against the evidence?

MR. ATTORNEY GENERAL. Yes, my lord, and I think so for this reason—

MR. BARON BRAMWELL. You think there was good evidence of an intention for warlike equipment.

MR. ATTORNEY GENERAL. I think there was, and I will tell your lordships in a few words why.

MR. BARON CHANNELL. Do you go the length of saying that the learned judge should have told the jury that if they believed the evidence they were bound to find for the Crown?

MR. ATTORNEY GENERAL. No, my lord, I do not say the learned judge was bound to tell them that; but what I mean to say is this, that having regard to the manner in which in the charge the question of equipment had been treated, the jury would be naturally led to suppose that another and a different kind of proof of warlike equipment was to be expected than that which was given, and that the intention so to do must be brought home to the builder. Perhaps, my lord, it would be as well that I should make the few observations I have to make upon the evidence with respect to that.

MR. BARON BRAMWELL. I should very much like to hear them.

MR. ATTORNEY GENERAL. There was a gunboat in course of construction. My friend, Sir Hugh Cairns, in his commentary upon the evidence, attacked the witness Da Costa for constantly calling this ship "a gunboat." He said he knew it as nothing else. It was proved by Hodgson, the packer, that Fawcett, Preston and Company, themselves, by Mr. Speers, their foreman, gave the orders to carry things to the gunboat, and that the ship was called the gunboat by them, and known by that name as much by them as it was by Da Costa, who received his information from Mr. Miller. There was no doubt, therefore, of that; the ship was a gunboat in course of construction. If the evidence of Da Costa was to be believed, and there was nothing to discredit him, Miller expressly admitted that he was building it conjointly with Fawcett, Preston and Company, under a contract with Messrs. Fraser, Trenholm and Company, as agents for the Confederate States. We proved a construction of fittings peculiarly adapted for gunboats, bulwarks peculiarly adapted for gunboats and nothing else, and nothing wanting to make it operate as a gunboat, except a pivot-plate for guns, which might be put in at any time, and as to which, I should have submitted, in the absence of any evidence to the contrary, you must infer that the work, if not interrupted by seizure, would have been completed in the way proper for a gunboat; for everything was proceeding in that direction. There was something about guns, which I agree was not traced conclusively to this ship; though it would be fit to be considered by the jury. Putting arms aside, and supposing arms not necessary to be put on board, (guns would be arms,) but putting that aside, is it seriously meant that a ship of that description, a gunboat, being built for a belligerent under his order, and constructed with bulwarks, hammock nettings, hatchways too small for cargoes, and other things peculiarly adapted for ships of war, wanting not to have its nature changed, but merely to have something added which, when finished, will make it a complete gunboat, has not everything which is necessary to give its equipments a warlike character? And is it not a conclusion of law, that the work which we found in progress would have been completed, if it had not been interrupted and stopped? Are you to say that the Crown, in all cases of this description, must wait until the works have been actually done which it is the object to prevent up to the point at which the ship is fit to receive her arms, the consequence of which will be that by craft and ingenuity, and under the cover of mists and fogs, it may well happen, especially if the law officers of the Crown require any time to consider the evidence laid before them, ships of a warlike description may get away? I cannot see anything in the nature of the thing, in the evidence in this case, or in the act of Parliament, that would make it right for a jury to assume that the character of this ship's equipment was not warlike, if that is required by the act; for I think the hammock fittings and the bulwarks were already of that character, and the whole fittings would have been completed at Liverpool if the ship had not been seized by the government. It seems to me, if more was required of a distinct warlike character for the equipment, than, according to my argument, was necessary, there was evidence here upon which, uncontradicted as it was, the jury ought to have found it.

Let me deal very shortly with the observations which my learned friend Sir Hugh Cairns made upon the effect of the evidence. He said that there were eight persons, all of them to be disbelieved, without any evidence to the contrary; four or five of them he called discharged servants, but it did not appear that they were discharged for any fault of theirs. One indeed, from a question which was put to him, it was inferred, had left for drunkenness; he denied it, and there was no evidence to the contrary. There were others who had left the service, in which they had long been engaged, in order to get an advance of wages; but there was nothing to show any *malus animus*; indeed, they were most reluctant witnesses for the Crown, and we would have given the world to have been on the other side, in order that we might cross-examine them.

My lords, these discharged servants, as he called them, were most unwilling witnesses. We had to wring the truth out of them like so many drops of blood.

LORD CHIEF BARON. They did not appear to be so.

MR. ATTORNEY GENERAL. I am not speaking certainly of Da Costa. Da Costa was not an unwilling witness, and I am not speaking of either Yonge or Chapman; but I

an speaking of the workmen. My learned friends observed that the counsel for the Crown evidently expected to get different answers to what they did get. That is quite true. It was with difficulty that we got from those workmen the answers that we did get, and they certainly did not in their manner show any disposition whatever to tell anything that would be favorable to the case of the Crown, which they were not obliged to do. I agree that there were some witnesses to whom that observation would not apply. I am applying it only to the workmen, and I say they were workmen who gave their evidence scantily, and disappointed the Crown with respect to some questions which were asked, and what we did get out of them as to the superintendents or agents of the Confederate States was got from persons who showed no disposition to help us, or to give us favorable answers.

LORD CHIEF BARON. That would raise a very curious question about evidence, whether you are to infer that a man has proved more, because he has said less, and thereby evinced a reluctance to tell the whole truth. It rather abates from your confidence in their integrity, and that by fully as much as you gain in quantity.

MR. ATTORNEY GENERAL. I think I was misunderstood in that. I did not intend to impute to the witnesses that they answered any question truthfully, but merely that we had supposed that they would be able, and of course willing to give us rather more information than we got from them. But I have no right to suppose that they did not answer according to their recollection at the time, or absence of recollection, those questions which they did not answer favorably to the Crown. But as a matter of fact, they did state, and with no appearance of zeal, what was enough for our case, namely, they proved the continual presence and superintendence, at the construction of this ship and of her machinery, of the agents of the Confederate States.

Well, then, my lords, I say that as far as those witnesses are concerned, there is nothing whatever to discredit them. Then we come to the question with regard to Mr. Da Costa, and if Mr. Da Costa is to be believed, (and excepting that he seemed not an unwilling witness, I cannot agree that there was anything whatever to discredit him or his statement,) admissions were made to him by the builder himself, conclusive as to the destination of the ship, and the persons who had ordered her, and under whose orders she was being made, being the orders of the very same people who were constantly about her, constantly superintending her construction and more or less interfering with it. I say there was nothing whatever to detract from the credit of that person. Then it was suggested by way of explaining the superintendence that there was another ship called the Phantom, and that that ship was also for the confederate government. Nobody said that she was for the confederate government. By the evidence it appeared that she was a merchant ship. Whether or not she was intended somehow or other to be used for the purposes of the confederate government is a mere matter of speculation which I do not think it necessary to enter upon. Tessier was to command her. It was distinctly proved that she was a merchant ship, and that Tessier commanded the Bahama, which was also a merchant ship, and which carried out the arms of the Alabama. I could, if it were necessary, easily construct a theory as to what was to be done with the Phantom as well as the Bahama; but I abstain.

Now, my lords, with regard to the rest of the evidence, there were Yonge and Chapman, two persons as to whom, if their character was in question, public or private, so graphically described on the late occasion here, and on the late trial by my friend, Sir Hugh Cairns, I should be placed in great difficulty, because, undoubtedly, it would be very far from my purpose to say one word in justification of those acts which my learned friend has referred to; but it was certainly a most remarkable thing, and still more remarkable to be repeated before your lordships than it would be before a jury, that my learned friend began by admitting that it was proved beyond all controversy that those persons were the agents of the Confederate States, (the agency was proved by written documents, some of which came from the custody of our opponents,) to prove whose agency only Yonge and Chapman were called; and then really all the exposure of their delinquencies was just as relevant as if on a trial for murder it became necessary to prove the delivery of a parcel or a letter, which was proved beyond the possibility of a doubt and never disputed; but in cross-examination of the witnesses, who proved some step in the delivery of that parcel or letter, they were asked the whole history of their lives, and they turned out to be ticket-of-leave men, and to have committed a great many crimes. If they were called to prove any great fact in controversy, no doubt a good deal of observation might have been made upon those who relied upon such testimony. But the way Sir Hugh Cairns turned this is the most remarkable example of his ingenuity that I ever recollect. He said, the attorney general entirely misunderstood why I said all that; why I expatiated upon the abominable conduct of those miscreants, as he called them to the jury. It was not to discredit anything they said, for I admit all that to be true; but it was to point out what they had not said, because they had not said anything about the Alexandras. He says Mr. Chapman goes to Liverpool, and goes to Trenholm and Company, pretends to be a sympathizer, and worms himself into all the secrets of the firm. There is no evidence of that. It is perfectly true that he pretended to be a sympathizer, and that,

no doubt, my learned friend was quite entitled to condemn; but that he got admitted into any of their secrets, or that he had ever an opportunity of knowing anything about the *Alexandra*, did not appear from anything that passed at the trial, and he was not cross-examined.

With regard to Yonge it was still more wonderful. My learned friend said he only entered into the history of Yonge, that miscreant, because he did not tell us anything about the *Alexandra*. But where was he from the time of the commencement of the building of the *Alexandra* to the end? Why, my lords, on board the *Alabama*, at sea. If we had proved anything about the *Alexandra* by Yonge and Chapman, I could well understand my friend would have said, "Do not believe what those people say;" but because we did not endeavor to prove by them any material part of the case, and because we only used these people as necessary media for the proof of matters admitted now to be beyond dispute, for that reason the jury were to believe that the issue of this cause depended on the characters of Mr. Chapman and Mr. Clarence Randolph Yonge.

My lords, so much for that. I put Yonge and Chapman aside. Then we have Da Costa and all these different servants. Da Costa speaks of what was said to him personally on several occasions by Mr. Miller, and of what he saw and heard Mr. Welsman and Captain Tessier say and do. The servants spoke of what passed in the yard of Fawcett, Preston and Company and of Miller and Company. Mr. Miller was in court at hand—it was admitted that he was in court, but something passed whether the attorney general was right in assuming that he was sitting opposite to him—he was there, and he was not put into the box to contradict what Da Costa said, nor did Fawcett, Preston and Company, or any of those persons named on the record, all of them in constant communication at times, neither Fawcett nor any member of that firm, neither Miller nor any member of his firm, neither Fraser, Trenholm and Company nor any member of that firm, not one of them got into the box to say a word as to whether what was said by Da Costa and by the workmen was true or untrue. If it was untrue they knew it, and if it was untrue any one of those witnesses were able to contradict it; but they were not able to do so.

LORD CHIEF BARON. That really is very questionable, as to Mr. Miller at all events.

MR. ATTORNEY GENERAL. If Miller did not tell Da Costa what he stated, he might have got into the box to contradict him.

MR. BARON BRAMWELL. The more vile a witness the easier to contradict.

MR. ATTORNEY GENERAL. It is new to me that where there is positive and direct evidence by a person who is not, in cross-examination, shown to be unworthy of credit, whatever may be said as to a certain forwardness of manner, and that he appeared to be zealous in his evidence, although I do not believe that he was so to such an extent as to demand the observations which were made upon it; yet, still, if the man was in court who could have contradicted him, who knew whether it was true or false, and did not choose to come forward, upon this state of the evidence to say that a jury could be justified in finding a verdict against the evidence, imputing perjury to all these people, I cannot understand. Now, as to its being proposed to call Miller, Miller was not a claimant on the record at all; but as to the possibility of calling every one of the defendants themselves, the point is so clear as matter of law that I think you will see that it is entirely beyond all dispute.

Now, my lords, take the foreign enlistment act, and remember the dates. That act was passed in the year 1819.

LORD CHIEF BARON. Was not Miller named in the information?

MR. ATTORNEY GENERAL. Miller was charged, but he was not a claimant. I am not going into the technical difference between claimant and defendant.

LORD CHIEF BARON. Miller was in the information.

MR. ATTORNEY GENERAL. Miller was one of these persons charged in the information as having done the acts from which the forfeiture resulted. He did not come forward as claiming the ownership of the vessel.

LORD CHIEF BARON. Because the vessel did not belong to him. He is in the information, and he was a party to the act.

MR. ATTORNEY GENERAL. He was not a party to the record. The information contains merely a narrative of the causes which resulted in a forfeiture of the vessel, and if those persons, or any of them, or any persons unknown—

LORD CHIEF BARON. He is charged with the offense contained in the information.

MR. ATTORNEY GENERAL. That is quite true; he is charged in the information as having committed the offense, but he is not brought here as a criminal. It is not a criminal information or proceeding.

LORD CHIEF BARON. All I meant to say was, it raises the question whether a person against whom the information is directed can be a witness.

MR. ATTORNEY GENERAL. I do not think, with great deference to your lordship, that it does raise that question, although the question is one which is of easy solution, because the law, against persons being witnesses or not under the laws relating to the customs and inland revenue, merely applies to defendants.

LORD CHIEF BARON. There is no distinction in the information between those who come in to claim the vessel and those who do not.

MR. ATTORNEY GENERAL. The information is against the ship, and the statement of the names is merely narrative. Strictly speaking, "persons unknown" are as much mentioned in the information as those who are named in it. It is merely narrative, and no person was a party to the information in any sense or form, excepting the claimants who claim the property.

But, my lords, I do not want to dwell upon that, because, if Miller had been a claimant, the case would have been just the same. At the end of the seventh section of the act of Parliament are the words under which the question arose, namely, that the seizure may take place under the forms of the laws of customs and excise, or of the laws of trade and navigation. Now, I must remind your lordship that two branches of law are referred to. It says, "That every such ship and vessel with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation."

LORD CHIEF BARON. This was a proceeding under the customs and excise.

MR. ATTORNEY GENERAL. It was not, indeed. This is not a proceeding under any law except the foreign enlistment act. The foreign enlistment act says, "That any such ship may be proceeded against," that is *in rem*, in like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

LORD CHIEF BARON. And the proceeding is according to the mode of the customs?

MR. ATTORNEY GENERAL. Clearly so. I ask your lordship's attention to this. It does not say that this is to be deemed a proceeding under the laws of customs.

LORD CHIEF BARON. We discussed that to a certain extent the other day, and all that could be said about it is, that the proceeding is under the excise laws, although the offense is committed under the foreign enlistment act.

MR. ATTORNEY GENERAL. Strictly speaking, if I may take the liberty of saying so, I should almost doubt, whether it was right to say that the proceeding is under the excise laws, because, in proceeding under this act, it only says, "in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws, made for the protection of the revenues and customs and excise."

LORD CHIEF BARON. It is conducted by the same officer, and proceeds exactly in the same way.

MR. ATTORNEY GENERAL. That is perfectly accurate.

LORD CHIEF BARON. Then the question is whether, along with that, there do not go all the exceptions and all the provisions which belong to the excise laws.

MR. ATTORNEY GENERAL. But let me examine that question.

LORD CHIEF BARON. It is not worth while to do so. Any parties are entitled to say, I will not put myself into the box in a case of this description; I will not condescend to give you my opinion.

MR. ATTORNEY GENERAL. Of course, every one is entitled to say that.

LORD CHIEF BARON. It is one of the elements upon which the jury will decide.

MR. ATTORNEY GENERAL. If he does that, I think every one moving for a new trial, upon the ground of the verdict being against the weight of evidence, would be entitled to say that that is one of the elements to be taken into consideration.

LORD CHIEF BARON. Do you mean to say that therefore a new trial ought to be granted on that ground? I, for one, should hesitate before I should make that a ground for granting a new trial in a case of this sort.

MR. ATTORNEY GENERAL. I merely say that a verdict being against the weight of evidence is a proposition proved by showing what the evidence was, and that it was all one side, although given in the presence of those who were able to have contradicted it on the most material points if they could truly have done so. I say, under this act, the procedure is to be after the manner of the laws of customs and excise, or under the laws of trade and navigation. The evidence act of the 14th and 15th Victoria, chapter 99, says distinctly in the second section that "On the trial of any issue joined, or of any matter, or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such action, suit, or other proceeding may be brought or defended, shall, except as herein after excepted, be competent and compellable to give evidence, *ex parte*, or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding. III. But nothing herein contained shall render any person, who in any criminal proceeding is charged with the commission of any indictable offense, or any offense punishable on summary conviction, competent or compellable to give evidence for or

against himself or herself or shall render any person compellable to answer any question tending to criminate himself or herself." It is quite clear, therefore, that this gives him—until subsequent legislation takes it away—gives a defendant or a claimant in a proceeding like the present the right of giving evidence on his own behalf, although he could not be compelled to criminate himself. Did any subsequent proceeding take that away? I submit, clearly not.

LORD CHIEF BARON. I think it is hardly worth while to discuss a question which I think is of an exceedingly doubtful character, and of which I do not see the termination.

MR. ATTORNEY GENERAL. I shall bow to your lordship's opinion if you think it is not worth while to discuss it.

LORD CHIEF BARON. If the question were to arise before me in the sittings after term, I should certainly reserve the point for the opinion of the court. I should receive the evidence as I always do if there is any difficulty about it.

MR. ATTORNEY GENERAL. I should have thought that it was plain that the right to give evidence on his own behalf given by that act could not be taken away by such words as we find in the two subsequent acts of Parliament, namely, that the defendant shall not be a witness in substance in any case relating to the customs." It might be most injurious to take away that right, and surely that right is not to be taken away from him by an act which speaks of proceedings under the laws relating to customs, if this is not an act properly relating to customs. It is, however, enough for me, if the matter is assumed for the present purpose in my favor. At the trial nobody suggested that it would not be competent for any of these persons to offer themselves as witnesses if they pleased.

LORD CHIEF BARON. So said the attorney general, but you are quite mistaken if you include the judge in that opinion. I did not say anything. I did not think I was called upon to say whether the attorney general was right or wrong.

MR. ATTORNEY GENERAL. I do not mean to imply that your lordship had an opinion, which you did not express at the time one way or the other. What I meant was, that nothing passed to lead to the conclusion, either from what was said by Sir Hugh Cairns or by the late attorney general, that it was doubted on either side that Mr. Miller might have been put into the box, and also the other parties. There was no suggestion anywhere of that kind.

LORD CHIEF BARON. Excepting that not one syllable was said about it until the case was over, and it was only when the attorney general was replying that the question was raised. Sir Hugh Cairns did not tender witnesses, and he might not have tendered them, because he might have thought that they were not evidence. There was no opportunity. The question never arose at all. The point was never discussed. The opinion of no one but the opinion of the attorney general was ever made public at all.

MR. ATTORNEY GENERAL. The thing took the only course which it possibly could have taken under the circumstances.

LORD CHIEF BARON. No. Sir Hugh Cairns might have tendered the witness, and the attorney general might have objected to him.

MR. ATTORNEY GENERAL. Sir Hugh Cairns did not tender the witness, and did not suggest that as a reason for not tendering him. Sir Hugh Cairns suggested other and totally different reasons, reasons which he was perfectly entitled to state, and in which I entirely concur from the bottom of my heart, namely, that it was incumbent on the Crown to make out its case, and no one could call upon the defendants to put themselves or any one else into the box if the Crown had not laid before the jury sufficient evidence of its own case. Undoubtedly my friend was right in that; but he did not suggest that he entertained any doubt, that, if he had considered it expedient to put them into the box, they might not have given evidence; nor did he so reply, when the attorney general made the remark which your lordship has alluded to, and when something passed from the bench to the effect, that it was unusual for the attorney general to assume that any particular person was opposite to him in court. It was said you may assume that the gentlemen are all here, and that they might have been put into the box. Sir Hugh Cairns deliberately chose not to tender them; and I am prepared to prove, to your lordship's satisfaction, I hope, that no one could have successfully objected to their evidence if offered; because the evidence act had given them the right.

LORD CHIEF BARON. We cannot decide that now, and I think it hardly worth while to discuss it.

MR. ATTORNEY GENERAL. I will not proceed further with it; but I think, under the circumstances, I am entitled to have it assumed in my favor that those persons who might have been tendered as witnesses, and as to whom it appears to us that they would have been competent witnesses—persons who might have contradicted the evidence given in my favor if it were not true—they did not offer to come forward into the box to give evidence for that purpose.

My lords, I shall conclude by very shortly referring to the point as to there being no rule for a new trial in such a case as this. It is settled by the case of Attorney General *vs. Rogers*, reported in the 11th Meeson and Welsby, and by another case reported in the 1st Crompton, Meeson and Roscoe, that when a jury in a penal action had found a verdict for the defendants, through a misapprehension of the law, if the court thought that there was any reason to believe that, whether by a mistake of the learned judge's direction, or through any other cause, they had been so misled, there would be a new trial. My lords, those are cases applicable to penal actions properly so called; and that rule, as far as I am aware, never yet has been extended to an information *in rem* of this description. The state of authority as to informations *in rem*, where you have not defendants to deal with but claimants coming in to claim property in possession of the Crown, seems to be this. In the books of practice, (though they are not conclusive authorities, they show what the law has been understood to be,) in Manning's Exchequer Practice, at page 180, your lordships will find the law stated thus: "A new trial will be granted where the justice of the case requires it, although the verdict be for the defendant." That is stated as applicable to informations *in rem*. I find in a note to Bateman's Excise Law—I will merely mention the passages without reading them—at page 66, the same thing is stated; while, on the other hand, the practice applicable to defendants in penal actions is accurately stated at page 161 in the same book. That case in Bunbury, to which my friend Mr. Mellish referred, is a case of an information *in rem*. It is reconcilable with the other authorities, because it relates to a different subject-matter, as to which the other authorities are totally silent. "Whether a new trial can be granted on an information of seizure, when a verdict is for the defendant." The twelfth section of the statute on which that case arose is a section which says, the goods are to be seized by the officers of the customs, and obviously to be dealt with in that way.

Now, my lords, I have concluded all the observations which I have to offer your lordships upon this case. I cannot but think that your lordships will deal in a way that will be satisfactory to the Crown and the public with this case. We are not here in an atmosphere where any argument of prejudice, either one way or the other, can prevail. The matter has been fully considered, and I have not the slightest doubt that your lordships' judgment in this case, in the way in which you will deal with it, will be entitled to, and will receive from those who may have to comment upon it hereafter, the same respect which has been justly paid to the long series (for it is a long one) of the decisions of the American courts on a similar act of theirs. I must say decisions most honorable to the country, and to the tribunals, from which they have proceeded; because that act was passed, as your lordships are aware, under circumstances of peculiar difficulty, when the irritation and the animosity resulting from the war of independence had not passed away, when the recent obligations of the United States to France were fresh in their memory, when the sympathies of the whole country ran breast high with the revolutionary party in France and against the powers of Europe who were then at war with the French republic. Under those circumstances it was that Washington caused to be introduced that act; and in every single trial that has ever taken place under it the judges of the United States have manifested a lofty and most upright determination to give full and fair effect to it, not straining it either in the direction of popular bias or prejudice, or of mercantile interest; and on the other hand, not straining it in favor of the commonwealth against the subject. We do not wish our own act to be strained in favor of the Crown against the subject; but we do desire that it shall be established by your lordships' judgment that those great and most important objects, to promote which that act was passed, will be found to have been effectually accomplished by that act, and that the great and most serious mischief which the act points out as the mischief which it was intended to remedy, may be effectually repressed by the construction which, from your lordships, that act shall righteously receive; and that the whole matter may not turn out to have been entirely misunderstood by the legislature which was engaged upon it, and a futile instrument, incapable of being successfully applied, placed in the hands of the Crown.

Adjourned until to-morrow at 10 o'clock.

FIFTH DAY.—SATURDAY, November 21, 1863.

MR. SOLICITOR GENERAL. My lords, after the full and complete, and I might almost say exhaustive argument of the learned attorney general, I feel my duty to be a light one, and I shall be enabled to shorten the observations which otherwise it might have been my duty to address to your lordships. At the same time, this, the first occasion on which the courts of this country have had to consider the foreign enlistment act, appears to me to be one of so great importance that I am induced to ask your lordships for your indulgence for a short time while I address to you some observations which appear to me to bear upon the matter.

My lords, I think it may be convenient for me to follow the order in which my learned friend Sir Hugh Cairns and the attorney general have addressed themselves to this question, and I will accordingly, in the first place, say a few words upon the principles

of international law which appear to me to be applicable to it independently of any statute. I will next consider the construction of the foreign enlistment act, and then I will apply myself to the questions of misdirection and the verdict being against the evidence.

My lords, the scope and tendency of the argument of my learned friend Sir Hugh Cairns appeared to be this: He, in the first place, sought to narrow as far as he could the application of the principles of international law which relate to this question. Having so far narrowed that application, he sought to cut down the American foreign enlistment act, in order to square it to those narrowed proportions; and then, thirdly, he endeavored to show that the English act had no wider operation than the American act. I shall contend, in the first place, that the principles of international law applicable to this question have not been quite accurately stated by my learned friend, but that they have a wider scope than he admitted; next, that the American act went beyond any international law applicable to the subject; and, thirdly, that our act went beyond the American act.

My lords, my learned friend, Sir Hugh Cairns, began by stating two propositions of international law which appeared to him to bear upon this question, and to be the only principles which did bear upon it. The first he stated in this way: he said the subjects of neutrals are at liberty to supply any articles contraband of war to a belligerent. Secondly, he said the territory of a neutral power is inviolate from any proximate or immediate act of war. I am stating those propositions, I think, in his own words. Now, my lords, with respect to the first of those propositions, my learned friend began by conceding that for a neutral government to supply to a belligerent contraband of war was a violation of neutrality, an unneutral, in other words, a hostile act, but he said the subjects of a neutral are at liberty to do so. If my learned friend meant no more than this, that the subjects of a neutral are allowed to supply contraband of war to a belligerent without involving their government in hostilities, or without compromising the neutrality of their government, and further that the neutral government is not bound by any duty, whether of perfect or imperfect obligation to the co-belligerent, to prevent this traffic, or punish those who carry it on, I agree with him. But my learned friend went beyond that; he proceeded to contend that the supply of those articles of contraband by the neutral subject was in no respect, to use his expression, *contra bonos mores*, that it was not in any respect a *delictum*, that it was not opposed to any principle of international law, but that it was entirely lawful and right. Upon this question I take the liberty of, to some extent at all events, differing from my learned friend. And I will call the attention of your lordships to the manner in which Mr. Duer, a writer who was referred to in the course of the attorney general's argument, treats this question, because his argument upon this subject appears to me to be very clear and cogent.

LORD CHIEF BARON. What volume and page?

MR. SOLICITOR GENERAL. The first volume, my lord, page 750. He says: "It has been alleged that the conduct of the neutral, who engages in a trade that by the law of nations subjects his property to capture and confiscation, is not illegal; that he has a perfect and lawful right to engage in the trade, and the belligerent a right equally perfect and lawful to seize and confiscate the property so employed. But the grounds on which this allegation is made are not easy to be discerned. It is, indeed, supported to some extent by the vague language of Vattel; but the observations of this not very accurate or profound writer will be found, when examined, to be inconsistent and self-contradictory. While he affirms that a neutral merchant may lawfully prosecute a trade with the belligerent country in articles contraband of war, he admits that a nation at war, from a regard to its own welfare and safety, has an absolute right to seize and confiscate all supplies of this nature destined to the use of its enemies; and yet he overlooks the inevitable consequence, that if these proceedings of the belligerent are necessary measures of self-defense, the conduct of the neutral in furnishing the war supplies is, in its nature, an act of positive though indirect hostility; that it is, therefore, a plain violation of neutral duty, and that it is the illegality of the trade, as involving this offense, that can alone justify the penalty by which it is sought to be restrained. Were the trade lawful, although the belligerent might be allowed, from a regard to his own safety, to intercept warlike supplies destined to the use of his enemy, he would be bound to pay their value and satisfy their freight, for thus the injury to himself would be prevented, and the rights of the neutral be preserved. In confiscating the goods and the freight, and in some cases the ship, the belligerent treats the neutral owners as enemies; and, unless on principle he has the right to consider them as such, their own government would be bound to listen to their complaints, and redress their wrongs." This appears to me to be cogent, I confess. "Unless they are rightfully treated as enemies, the condemnation of their property, instead of being lawful, would be an act of violence and a cause of war. I am not aware that the observations of Vattel are sustained by any other writer on public law; and a single remark of Sir William Scott, that has already been given, contains in itself a full reply. It is found in his observation that there are no conflicting rights between nations at peace; and this observation, although applied by him to the single case of a resistance to search,

may be applied, with equal truth, to every case of a violation of neutral duty." That contains the statement of his argument.

MR. BARON BRAMWELL. I confess it seems to me that that is a very elaborate dealing with words, because the proposition may be laid down that it is unlawful in the sense that the party who commits the act is subject to the punishment of capture and confiscation; it is not unlawful beyond that. You do not treat him as a pirate; you do not treat him as a prisoner of war. It is perfectly lawful for a man to enlist in the service of a foreign country, and it is perfectly lawful to shoot him. Those are not conflicting rights. What is meant is that there is no other illegality in the enlistment than this, that it subjects the man to be shot. It seems to me, with great submission, that those good folks, if they thought of the use of the words they were dealing with, never could make the mistake they do.

MR. SOLICITOR GENERAL. There is this distinction between the way in which you deal with a man violating a blockade or a man carrying contraband, and a man who is doing what is perfectly right. For example, take the case of a neutral shipowner carrying enemy's goods, not contraband; if you take a neutral ship carrying enemy's goods not contraband, you take the goods out and you pay the owner the freight. You have a right to take out the goods because it is necessary for your own purposes as a belligerent.

LORD CHIEF BARON. That is to damage the enemy.

MR. SOLICITOR GENERAL. Yes; but inasmuch as the neutral owner has not done wrong, you do not injure him in any way, you pay him the freight. If he, the neutral owner, commits a wrong against the law of nations, you seize and confiscate his goods.

LORD CHIEF BARON. You never punish him, you neither imprison him, nor shoot him, nor try him by a court martial, or in any other court.

MR. SOLICITOR GENERAL. That is so.

LORD CHIEF BARON. It used to be the same with respect to offenses against the revenue laws of this country. Originally the revenue laws of this country never punished except by fine and forfeiture.

MR. SOLICITOR GENERAL. That is so. Upon this question your lordship accurately stated the law yesterday, if I may be permitted to say so. The law of this country so far recognizes the law of nations, that it will not enforce a contract which is based upon an intended violation of international law; but the law of this country does not recognize the law of nations so far as this, that what is an offense against the law of nations is an offense against our criminal law, and I venture to think that is a sound distinction. I will not follow that subject to any greater length, because it is not necessary to my argument. It was touched upon yesterday, and the matter appears to me to be not unworthy of consideration. I will pass from it in a very few moments; but I will observe that this supposed right, according to international law, of the subject of a neutral state to export contraband to the enemy, is the same as his right to break a blockade; there is no way of punishing him unless you catch him in the act; it is not a violation of our criminal law at all events; but still the courts have said, and those cases are referred to by Mr. Duer, that if it appears that a captain of a ship, knowing of a blockade, intends to violate it, the contract of insurance will not be enforced, because the act of the master of the ship is a breach of international law. That I apprehend to be the principle of our law, and that was the principle upon which the cases referred to by the learned attorney general yesterday were decided; and I take that as the doctrine that may be considered to be now settled in Westminster Hall. That was the principle on which the case of *De Wutz vs. Hendricks* was decided, where a contract founded upon the raising of a loan for subjects in arms against a government in amity with our own was held not to be capable of being enforced in this country. It was not a criminal offense, but an offense against the law of nations, and therefore the courts of this country would not lend themselves to the enforcement of it. I may observe that the language of Lord Stowell, in several cases, is entirely opposed to the view that a neutral sending contraband or trying to break a blockade is really committing no offense against international law. In the case of the *Imima*, reported in the third volume of Robinson, page 168, Lord Stowell says: "The rule respecting contraband is always understood to be that the articles must be taken *in delicto*." That is the term he uses. And then again, in 5th Robinson, in the case of the *Richmond*, at page 331, he speaks of a contraband dealing in ships. He says: "Here was an avowed intention of going to sell a ship to a belligerent, which in time of war is at least a very suspicious act, and to do a great deal more, to sell a ship which the neutral owner knew to be peculiarly adapted for purposes of war, and with a declared expectation that it would be hostilely employed against this country. It cannot surely, under any point of view, but be considered as a very hostile act, to be carrying a supply of a most powerful instrument of mischief, of contraband ready made up, to the enemy for hostile use, and intended for that use by the seller, and with an avowed knowledge that it would be so applied."

LORD CHIEF BARON. Provisions are considered now as contraband.

MR. SOLICITOR GENERAL. In some cases they are; it depends upon the intention and

the destination; and coals, under some circumstances, would be contraband, and under others not. The question of contraband or no contraband is exceedingly difficult, when you come to apply it to the facts; but I apprehend that the intention and object is generally the test with respect to articles *ancipitis usus*, so far as contraband is concerned. I may have a word to say afterward with reference to that.

LORD CHIEF BARON. Many of those laws were made by the strong, by those who could enforce them, and therefore the weak were obliged to acquiesce.

MR. SOLICITOR GENERAL. No doubt.

LORD CHIEF BARON. And they come into the "*omnibus*," as the attorney general says; they get into the "*omnibus*" because they are obliged to do so.

MR. SOLICITOR GENERAL. And the *omnes* are all those who are strong enough to enforce what they call their rights.

LORD CHIEF BARON. Against those who are compelled by force to acquiesce.

MR. SOLICITOR GENERAL. Yes, I believe that is so, my lord. I pass from this subject with the remark that it appears to me not an accurate expression to say that a neutral merchant supplying contraband, whether consisting of ships or arms and ammunition, is not violating any principle of international law. I apprehend that he does commit an offense against international law, but he does not commit an offense against the criminal law of this country, and I conceive that this country is not bound, under any obligation to other countries, to punish him. In that sense only I accept my learned friend's proposition, and I mean to press this argument no further than this, that this contraband trade in arms and ammunition and in ships of war, which Lord Stowell characterizes as a peculiarly malignant description of trade, is not that description of trade which it appears to me ought to meet with any peculiar tenderness on the part of the legislature or courts of justice. I do not mean that you must stretch the criminal law for the purpose of including any person not within its words; on the other hand, you are not to narrow and fritter away the foreign enlistment act in order to favor a contraband and illicit trade opposed to the law of nations; and with respect to this foreign enlistment act, if it is contended on the other side that it interferes with one description of trade not peculiarly entitled to be favored, on the other hand it may be said to be in the interest of peace, and therefore in the interest of the whole community.

Now, my lords, a few words as to the second principle of international law which my learned friend stated in this manner: The territory of a neutral power is to be kept inviolate from proximate or immediate acts of war. It appears to me that that proposition is too narrow; it should be, that neutral territory should not be the basis of hostile operations. I should prefer stating the proposition in that way, and when my learned friend, Sir Hugh Cairns, went so far as to contend that a foreign belligerent would have a right to establish here a manufactory of arms —

LORD CHIEF BARON. You need hardly labor that.

MR. SOLICITOR GENERAL. I think my learned friend went a little too far in that.

LORD CHIEF BARON. I think the case which Sir Hugh Cairns would have put would have been setting up a manufacture either by some subjects of the foreign power domiciled here, or by British subjects willing to assist them by commencing the manufacture.

MR. SOLICITOR GENERAL. I think my learned friend limited his proposition to the foreign belligerents employing their own subjects.

LORD CHIEF BARON. He would hardly entertain the notion that they could set up in this country a manufactory as a manufactory of the Confederate States.

MR. SOLICITOR GENERAL. I am certain that my learned friend, Sir Hugh Cairns, if he were an adviser of the Crown, would not advise the Crown to submit to such a use of its territory; and when my learned friend endeavored to limit it to a manufacture in which foreigners were engaged, that would make no difference at all; it would be the use of the neutral territory as a basis of hostile operations, and though no immediate act of war would be committed, it would be such a use of the neutral territory as no neutral state with any respect for itself would permit, and which the opposite belligerent, if strong enough, would be sure to complain of.

Now, my lords, it appears to me that under this head of the inviolability of neutral territory comes the question of the equipping, the arming and manning of vessels of war by a foreign state in a neutral territory. I apprehend that that is contrary to the principles of international law. This is quite clear, that it gives the neutral a right to complain of the foreign government on account of any such use of its territory; and I should be disposed to say that any use of its territory for the equipping of vessels with the intention of using them for hostile operations, though not accompanied with the commissioning or arming or manning, would still be a use of the neutral territory of which the neutral would have a right by the law of nations to complain.

It is another question, which I am not called upon here to discuss, whether there is a right on the part of the other belligerent to require the neutral to assert his neutrality correlative to the right of the neutral to insist upon his neutrality. That may be a very doubtful question. I am not aware that there is any such correlative right; the neutral is the judge as to how far he will protect his own sovereignty and the inviolability of

his own territory, and according to American authorities, if he chooses to permit this use of his territory by both belligerents, neither has a right to complain. That is the American doctrine. I will not proceed to discuss how far that doctrine may be treated as established international law, but I think I may venture to suggest a doubt whether it would be entirely satisfactory to us. For example, supposing we were at war with the United States, and they were fitting out vessels at Brest and other French harbors, if the French government were to say, in answer to our exhortations, "You may do the same," I very much question whether we should accept that as a satisfactory answer. But it is not necessary for me to discuss that question.

It appears to me, that, on the principle of international law, that mode of proceeding that was suggested by Mr. Baron Bramwell, and which certainly seemed to give some embarrassment to my learned friends on the other side, namely, the equipping of a vessel, all but her armament, on shore, and putting in the armament, say, three and a half miles out at sea, the armament being shipped with the same design as the equipment, and at the same place, would be a violation of the neutral territory, and clearly an offense against international law; and if that were not plain upon principle, and according to common sense, I think it would be rendered plain by applying the doctrines laid down by Lord Stowell in the case of the *Twee Gebroeders*, which has been referred to. And I may observe, when my learned friends speak of this or that proceeding being not opposed to the letter of international law, it is very difficult to say what they mean. It is very difficult to distinguish the letter from the spirit of international law. There are not in international law those technical quibbles and subtleties which we are accustomed to in our law, but which we endeavor so far as possible to get rid of. I do not hesitate to say that if we should have a right to complain of a privateer being fitted out and armed at Brest, we should not consider that we had a less right to complain because her armament was put into her two or three miles out at sea. The case of the *Twee Gebroeders* is reported in 3d Robinson, page 162. I think the facts are in your lordships' recollection. The case was this: A capture was made by a vessel of war lying within the three miles of the neutral territory, but she sent her boats out of the neutral territory, and it was the boats that actually effected the capture. It was there argued that the capture was out of the neutral waters. So it was, in one sense, because the prize was taken out of the neutral waters; but Lord Stowell would not hear of such an evasion.

LORD CHIEF BARON. The ship acted like a polypus, sending out its long arm and seizing its prey.

MR. SOLICITOR GENERAL. Yes, my lord; and Lord Stowell took occasion in that case to express himself generally upon the question of direct and immediate acts of hostility in a manner which appears to me to be useful to quote. He first says: "This may be argued to be an immediate act of hostility, and very much the same thing as the firing of a shot." But he goes on to say: "If it were necessary, therefore, to prove that a direct and immediate act of hostility had been committed, I should be disposed to hold that it was sufficiently made out by the facts of this case." Then he says: "But, direct hostility appears not to be necessary." And it is upon this ground I object to my learned friend's limitation of the rule of international law. "Direct hostility appears not to be necessary, for whatever has an immediate connection with it is forbidden; you cannot, without leave, carry prisoners or booty into a neutral territory, there to be detained, because such an act is an immediate continuation of hostility. In the same manner an act of hostility is not to take its commencement on neutral ground. It is not sufficient to say it is not completed there." I cannot help thinking that those words bear very much upon the present question. "You are not to take any measure there that shall lead to immediate violence; you are not to avail yourself of a station on neutral territory, making, as it were, a vantage ground of the neutral country, a country which is to carry itself with perfect equality between both belligerents, giving neither the one nor the other any advantage." Then he goes on to say: "Many instances have occurred in which such an irregular use of a neutral country has been warmly resented, and some during the present war. The practice, which has been tolerated in the northern states of Europe, of permitting French privateers to make stations of their ports, and to sail out to capture British vessels in that neighborhood, is of that number." Here he assumes the case of a vessel capturing out of neutral waters, itself being in neutral waters at the time of the capture, but rallying from the neutral waters. Then he says: "Yet even this practice, unfriendly and noxious as it is, is less than that complained of in the present instance," and so on.

MR. BARON BRAMWELL. As a matter of fact, what is the meaning of that expression, to make stations of their ports; merely that they made them a refuge, or that they fitted out in them?

MR. SOLICITOR GENERAL. I apprehend that the distinction would be just this: If they went merely for the purpose of ordinary repairs or provisions, or were driven into the place by stress of weather, that would be lawful; but if they, in fact, used the neutral port for the purpose of lying in wait and issuing out of that port in order to prey upon

the commerce of the enemy, that would be an improper use of the neutral port, as I understand Lord Stowell, although the capture were not made within the three miles.

MR. BARON BRAMWELL. Although they had no warlike stores in the neutral port?

MR. SOLICITOR GENERAL. Although they had no warlike stores in the neutral port; but they must not make a station of a neutral port. I apprehend that that would apply almost directly to the question put by Mr. Baron Bramwell, that if you equip a vessel three miles out from Liverpool, the vessel would be virtually equipped at Liverpool.

MR. BARON BRAMWELL. Lord Stowell says that the practice had been much complained of.

MR. SOLICITOR GENERAL. Yes, my lord, and your lordships will see that he quite agrees that it is a subject of complaint. He says, "Many instances have occurred in which such an irregular use of a neutral country has been warmly resented, and some during the present war," (that is, by ourselves.) "The practice which has been tolerated in the northern states of Europe, of permitting French privateers to make stations of their ports, and to sally out to capture British vessels in the neighborhood, is of that number, and yet even that practice, unfriendly and noxious as it is, is less than that complained of in the present instance; for here the ship, without sallying out at all, is to commit the hostile act." So that Lord Stowell appears to think that for a vessel to send out its boats and commit the hostile act is a trifle worse than for the vessel itself to sally out and commit the hostile act.

MR. BARON BRAMWELL. He says that that is worse than that of which complaint is made, namely, a vessel not beginning hostilities when within the neutral territory, but making an habitual asylum of the port, as I understand. It is a curious thing, but Lord Stowell hardly goes to the extent of saying that such a thing would be a lawful subject of complaint on the part of the neutral against the belligerent which permitted it.

LORD CHIEF BARON. They could not in the neutral territory make an arsenal for any purpose. They could not be allowed to use the neutral soil for their own purposes, to advance their own advantage. They would not be allowed by any neutral power to have a place in which to fit out and prepare their own ships.

MR. SOLICITOR GENERAL. No, certainly not to prepare them.

LORD CHIEF BARON. So as to fit them for warlike operations, using the neutral port as a place at which to remain and watch, and from which to start on an expedition of aggression.

MR. SOLICITOR GENERAL. That will be the rule, I apprehend. Therefore, my lords, I have thought it right somewhat to qualify, and, in fact to extend, the propositions of international law which my learned friend Sir Hugh Cairns appeared to me to state too narrowly, for the obvious purpose of narrowing the construction of this act, which he endeavors to square with them.

And, my lords, before I come to the actual construction of the act, I may be allowed to observe, that though no doubt vessels of war are contraband in the same sense as arms and ammunition are contraband, yet considerations apply to vessels which do not apply to arms and ammunition, and to which it is as well for a moment to advert. A vessel is not merely an engine of war, but a vessel carries engines of war. A vessel carries men to work those engines. A vessel has a nationality; a vessel is territory for some purposes, and inhabited territory. So that a vessel armed, equipped, and manned, is, in fact, floating hostile territory, and a vessel not equipped, or manned still has capacities for the combination of armaments, to use an expression of Canning, which take it out of the category of arms and ammunition; and therefore there appears to be some reason why the legislature should have thought it desirable by enactments to deal with vessels without dealing with other articles of contraband of war. I think that one can easily see very excellent grounds on which that distinction should be drawn; and, my lords, these grounds are illustrated by the correspondence between Mr. Jefferson and our representative in America, Mr. Hammond, in 1793. I am not going at length into the history of our conduct or the conduct of the American government. That has been sufficiently brought before your lordships. I am only going to make one or two short remarks upon that. The distinction between ships and merely arms and ammunition is taken both by our government and by the American government in 1793, before any foreign enlistment act existed in either country. It appears that in 1793, we addressed two memorials to the American government. In the one we complained that they furnished the French, with whom we were at war, with arms and ammunition. In the next memorial we complained that they allowed the French to fit out privateers in their harbors; and to those two separate remonstrances Mr. Jefferson, who was then Secretary of State, addressed himself separately. With respect to the first, he says, "The purchase of arms and military accoutrements by an agent of the French government in this country, with an intent to export them to France, is the subject of another of the memorials. Our citizens have been always free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress those callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely

be expected. It would be hard in principle, and impossible in practice." I cannot help thinking that this is the strongest argument of all to be urged why a nation should not interfere with the sale of arms, that it would be impossible to inquire how many guns and pistols each manufacturer in the country has been making. *Lex neminem cogit ad impossibilia* is a maxim peculiarly applicable to the law of nations. No country would be so unreasonable as to expect another country to do that which is impossible; but that argument does not apply to ships of war; it is possible at all events to deal with them. He says, "It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement of their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent powers on their way to the post of their enemies. To this penalty our citizens are warned that they will be abandoned." And I may observe in passing that the American proclamations of neutrality and our proclamations of neutrality always regard the exporting of arms and ammunition as an offense; they call it an offense, but an offense punishable by the law of nations. We tell them in our proclamation that those who infringe the foreign enlistment act will be liable to penalties not only according to the law of nations, but under the act. Your lordships will see, if you refer to page 13* of the appendix, that that is the form of it; I merely refer to it in passing. After various warnings to our subjects not to infringe the foreign enlistment act, it goes on to say, "or endeavoring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties, or by carrying officers, soldiers, dispatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced." *Reidendo singulo singulis*; by the statute in respect to all infringements of its provisions, by the law of nations in respect to the exportation of contraband.

Having read the answer of Mr. Jefferson to our first memorial complaining of the supply of contraband, I now come to the next answer with respect to our memorial on the subject of allowing ships to be fitted out for the French. Your lordships will observe that in his former answer he refers only to arms and ammunition, not to ships at all. He says "But the practice of commissioning, equipping and manning vessels in our ports to cruise on any of the belligerent parties is entirely disapproved, and the government will take effective measures to prevent it." Then again, (this is the only further extract from these American papers to which I will refer,) Mr. Jefferson writes this to Monsieur Genet, the minister plenipotentiary of the French republic: "The President, after mature consideration and deliberation, was of the opinion that the arming and equipping," (he does not here use the term "manning,") "vessels in the ports of the United States to cruise against nations with whom they were at peace, was incompatible with the territorial sovereignty of the United States; that it made them instrumental to the annoyance of those nations, and thereby tended to compromise their peace; and that he thought it necessary, as an evidence of good faith to them, as well as a public reparation to the sovereignty of the country, that the armed vessels of this description should depart from the ports of the United States." And, my lords, before any foreign enlistment act was enacted in America, Washington acted upon that policy, at the risk of a war with France, and at the risk of his own impeachment; for a storm of popular indignation was raised against him; the feeling of the country being violent in favor of France, and equally violent against England. Washington, undeterred by all those considerations, did stop the equipment of French privateers, and he put a man on his trial under the common law for being concerned in so doing. I must say that that appears to me to be a very bright passage in American history. I know no stronger instance of the "*Vir justus et proposita tenax*" determined to do what is right, undaunted by popular clamor. Washington by so doing risked his popularity, which he lost for a time, but he persisted in his policy, and finding that the provisions of the common law were not sufficient, he applied to Congress, and his influence was such that he obtained an act of Congress, going beyond the provisions of international or the common law. I will not refer again to the address to Congress of Washington, which the attorney general read; but that clearly shows that he considered the powers of the common law, or the rights which international law gave him, were not sufficient, and therefore he came to Congress for the purpose of giving him further powers. The object of the American statute, as of ours, was the preservation of peace. The object was the prevention of disputes. As we all know, in international law there are not those hard lines, there are not those sharp landmarks, which are found in municipal law. There always is a wide margin for dispute if a state is determined to be disputations and is strong. What Washington wished was to be within this Oregon, this disputed field of international law. He did not wish to discuss with foreign nations precisely how

* See page 139.

far he might or might not, without a violation of neutrality, allow foreign belligerent vessels to use his ports; he desired to avoid those discussions, and therefore it was that the American enlistment act (like the English enlistment act, which goes beyond the American act) was expressly framed for the purpose of exceeding and going beyond the limits of international law. I venture to contend, in the first place, that my learned friend Sir Hugh Cairns has laid down the principles of international law too narrowly; and, secondly, that he has no ground whatever for contending that the municipal statute was passed as merely declaratory or confirmatory of international law; history is there against him.

Now I come to the construction of the statute. My learned friend the attorney general has already called your lordships' attention to this, that our statute is wider than the American statute. I may remind your lordships that the American statute contains the words "fit out and arm;" we put the words in the disjunctive, and we add "equip and furnish," I suppose with some meaning. It appears to me that you cannot suppose that those words "equip and furnish" were not added with an intention that they should apply to some offense which was not necessarily hit by the words "fit out and arm." I apprehend that "fit out" is one of the widest expressions which you could apply to a vessel; "equip" may possibly not be so wide, "furnish" may not be so wide, and those words are added in our act. And then, as your lordships are aware, there are added in our act the words "in order that," in addition to "with intent," and for a purpose which I will venture presently to suggest. And then there comes the clause prohibiting, not only the vessel being equipped for the purpose of cruising and committing hostilities, but her being "used as a transport or store-ship," which words were introduced (if one may refer to history) at the suggestion of Sir James Mackintosh, who said: "The statute without these words will be unfair, because the Spaniards only want transports and store-ships; you will allow them to have transports and store-ships, while their revolting colonies are not allowed to have privateers." Then that amendment was made in committee, and it was made somewhat awkwardly.

My learned friend the attorney general has descanted upon this act so fully, that many remarks which I might otherwise have made are not necessary, and I will endeavor as far as possible to avoid repetition. He has already referred your lordships to the object of the preamble, and to the statement that the law at present in existence was not sufficient; and he has referred to five clauses, which manifestly carry the municipal law beyond the international law. With those remarks I come to section 7. And, my lords, upon that section two questions arise, as it appears to me, which I will treat separately. The first in order which I shall take is the intent, and then, secondly, what is to be done in pursuance of that intent. Now, first, with respect to the intent, who may form the intent? No doubt the intent must be formed by somebody who has some control over the vessel. I apprehend, as I think was suggested by Mr. Baron Pigott, that there may be two descriptions of intent, both within the meaning of this statute. The first description would be the intent of a foreign belligerent, or his agent, to employ a vessel to cruise and commit hostilities. The second intent would be that of a person who equipped her in order that she might be so employed. And I cannot help thinking that the words "in order that" were introduced to meet that second intent, for it might be said, by way of what I should venture to call a quibble, the equipper cannot intend that she shall be so employed, because he has no control over her after she leaves his hands. I dare say, as a matter of history, an argument of that sort was put forward, and then the legislature said, for the purpose of meeting that, we will put in the words "in order that." That, I think, is the probable explanation of the words "in order that" being inserted. Now, with respect to the first class of intention to which I was referring, namely, the intention of a belligerent or his agent to employ the vessel hostilely, if he "procures" her to be equipped, even although the equipper does not know of the intention, I apprehend there can be no question at all that that would forfeit the vessel; it would not be necessary to contend that in this case, but I apprehend it would be so according to the strict construction of the act. The object is prevention; the object is the prevention, if possible, of any vessel issuing out of this country as the basis of hostilities; and I apprehend that that would be the true construction, and that the vessel would be forfeited independently of any intention at all of the equipper, the intention being in the person ordering the vessel and having control over its ultimate destination to employ her in hostile operations; and if that be so, for a moment adverting to the evidence, there can be, I think, no question that this vessel would have been forfeited upon that ground here. However, that is rather anticipating. Then, secondly, with respect to the equipper, I apprehend that if the equipper equips the vessel knowing that she is to be so employed, then he is within the act; he equips "with the intent," or "in order that," or, at all events, he "knowingly aids and assists," and he clearly would come within the act. And I may refer here to the case which was quoted yesterday by the attorney general, the case of a druggist who sold drugs to a brewer, he knowing that the brewer would use them in his trade. He there had no control over the ultimate

use of the drugs any more than the equipper has over the ultimate destination of the vessel; but Lord Ellenborough put it as high as this, that he was even aiding and procuring (that was, I think, Lord Ellenborough's expression) the brewer to commit an unlawful act by furnishing the drugs, and, therefore, the contract of sale was held to be void.

Mr. BARON CHANNELL. That was not an action for penalties, and, therefore, that expression of opinion on the part of Lord Ellenborough was quite unnecessary to the decision of the case; it was only an action for the recovery of the price of a certain article. The particular construction which the chief justice put in that case upon the words of the statute is not very important.

Mr. SOLICITOR GENERAL. It may be that he put rather a strong construction upon the words. He uses the words "aiding and procuring." I am not prepared to say that that is not a strong construction.

Mr. BARON CHANNELL. The statute was passed in order to prevent the public being injured by the use of noxious drugs in the preparation of beer. In the same way an excise act was passed to prevent the public being defrauded in the delivery of bricks. An act done in violation of such statutes will not entitle the party to recover.

Mr. SOLICITOR GENERAL. Yes, it is not necessary to put the case higher than that; but I think under those circumstances the druggist selling the drugs, though he had no control over the ultimate destination of them, still supplied them "in order that" they might be improperly used; I do not wish to put it higher. And I may put the case of a man who let lodgings to a woman for the purpose of carrying on the trade of a prostitute, who, it was held, could not recover the rent; he had no control over her, but he let the lodgings "in order that" she might carry on an improper trade; and so here, though the equipper has no control over the vessel after she leaves the port, he supplies the ship "in order that" she may be used in the manner prohibited.

Mr. BARON CHANNELL. For the purpose of considering the statute, we have to bear in mind that two classes of persons are to be embraced, the chief actors and the subordinate actors. With regard to the chief actors, it may be that there must be an intent that when built the vessel should be engaged in the service of a foreign power; but with regard to the subordinate actors there must be a guilty knowledge.

Mr. BARON PIGOTT. Which would be evidence for the jury as to intent.

Mr. SOLICITOR GENERAL. Yes, my lord; with respect to the intent, I do not think there will be any difficulty in this case. When I come to the evidence I think I shall make that quite clear. It is very seldom in fact that you can prove intent so conclusively as was done here. Now I come to this; what is to be done in pursuance of that intent. The words are these, and we seek to add nothing to the words, and, on the other hand, we desire nothing to be subtracted. "If any person shall equip, furnish, fit out, or arm any ship or vessel" (I will take those words alone at first without embarrassing myself with the question of "attempt") "with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, &c., "with intent to cruise or to commit hostilities." The word "intent" is unnecessarily repeated, I apprehend. What is the meaning of those words? I could quite understand this proposition; it would be a very definite and intelligible one; she must be equipped so far as to be in a condition when she leaves the port to commit hostilities. That I could understand, but that would mean that she must be armed, because she could not be in a condition to commit hostilities without being armed; and more, it must mean that she must be manned, because the guns cannot fire themselves. So therefore, in order to contend that she must be in a condition to commit hostilities, you must go the length of saying that she must be both manned and armed. But that is against the words of the statute; that is reading the conjunctive instead of the disjunctive, and the very object of the legislature is defeated, as it appears to me, who intentionally avoided the conjunctive and used the disjunctive. Then again that is distinctly opposed to the doctrine of the United States, laid down in the case of the United States *vs.* Quincy, *valent quantum*. I am not going to discuss now how far that would be considered by the court, I will not say an authority, because no American case can be treated absolutely as an authority in this court, but as one in the reasonableness of the decision of which they would be disposed to concur. But I may remind your lordships upon that point that the case of the United States *vs.* Quincy is strictly in point; it is reported in the Appendix at page 78*, "To attempt to do an act does not either in law or common parlance imply a completion of the act or any definite progress towards it." No doubt Quincy was indicted for the attempt—and while upon that subject I may say that I concede that the attempt must be to do that which if done will be an offense. No doubt when there is the intent that the thing shall be done, any step toward doing it is an offense. "To attempt to do an act does not either in law or common parlance imply a completion of the act or any definite progress toward it. Any effort or endeavor to effect it will satisfy the terms of the law. This varied phraseology in the law was probably employed with a view to embrace all persons of every description who might be engaged directly or indirectly in preparing vessels

with intent that they should be employed in committing hostilities against any powers with whom the United States were at peace. Different degrees of criminality will necessarily attach to persons thus engaged. Hence the great latitude given to the courts in affixing the punishment, namely, a fine of not more than \$10,000 and imprisonment not more than three years. We are accordingly of opinion that it is not necessary that the jury should believe or find that the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment." Then, my lords, if that is so, that the vessel need not be in a condition to cruise and commit hostilities, which some of my learned friends have contended for, and which would require the interpolation of words into the statute which are not there, how must she be equipped? That is the question. Now it is contended that the equipment, though not amounting to an actual arming, so that the vessel may be in a condition to commit hostilities, still must be an equipment, as I understand my learned friends, of a warlike character, not *oncipitis usus*, but of a warlike character. Now, as I before observed, I can quite understand what you mean by "arm," but there is a good deal of difficulty in understanding precisely what you mean by "equipment of a warlike character."

Mr. BARON BRAMWELL. Allow me to ask you, which seems to be a question of considerable consequence, is this case of Quincy a case in point? You see that what the judge, Mr. Justice Thompson, there says, is this: "That it is not necessary that the jury should believe or find that the Bolivar, when she left Baltimore and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit hostilities, in order to find the defendant guilty," but then they had previously determined that the accessory or subsidiary offender, if we may so call him, might be guilty where he had done less than it was necessary that the principal offender should be guilty of doing; they do not, therefore, determine that if the principal offender, the actual equipper, the man charged with equipping and furnishing, had been indicted, it would not have been necessary that the Bolivar should have been armed.

Mr. SOLICITOR GENERAL. No.

Mr. BARON BRAMWELL. If that is so, is it a case in point upon this particular information?

Mr. SOLICITOR GENERAL. My answer to that is, that it is in point because it is decided upon those words in the American act, which are the same as ours, and in the disjunctive. The words in the American act upon which this case was decided are, "attempt to furnish, fit out, or arm;" our words are, "furnish, fit out, or arm." Therefore, I say it is an authority, *non constat*, that if the principal had been tried in the American courts they would have held that it was enough. Why? Because the words differ; it would have been "fit out and arm."

Mr. BARON CHANNELL. They decided it as a matter of pleading, a very unimportant point connected with the rest of the decision; so far as this point goes they decided that the indictment in point of form was good; that whereas the indictment was levelled against the subordinate actor, as against him it used the very words of the statute, and that that was sufficient.

LORD CHIEF BARON. But for the purpose of constituting the offense two acts are necessary; if any one assists in doing the one, knowing that the other will be done also, or even possibly without that, if any one assists in the one, he will be indictable for assisting in that one. The American authority seems to be an authority only for this, that wherever the offense consists of two parts, and the assisting of the offender is itself an offense; if you assist in the one you assist in the other; you assist him as to the entire completion of the offense, because he cannot do the whole unless he does that; it is not necessary that you should assist him in both.

Mr. BARON PIGOTT. That supposes that fitting out simply is an offense.

Mr. SOLICITOR GENERAL. Distinct from arming. But the material part of the case is this, that they distinguish between "fit out" and "arm." If "fit out" and "arm" mean the same thing, there would have been no opening for the distinction, but they say that Quincy may have been guilty of fitting out, although there was no arming.

Mr. BARON BRAMWELL. Although he did not arm.

Mr. SOLICITOR GENERAL. Yes, although he did not arm, and although he did not assist to arm. They say that fitting out and arming are two different things, and that fitting out means something else than arming, and it is impossible to say that that must not have been here decided. They deal with the facts, and they say it is not necessary that the vessel should be in a condition to commit hostilities.

Mr. BARON CHANNELL. You are meeting the argument of the other side, that the equipment, however far it had proceeded, must have been a warlike preparation.

Mr. SOLICITOR GENERAL. Yes; I went back for a moment to Quincy's case in consequence of Mr. Baron Bramwell referring to it. I use the case of Quincy, as going distinctly to this, that the vessel need not be so far equipped as to be fit to be employed in hostile operations.

Mr. BARON BRAMWELL. I think Quincy's case is of great importance, not so much on account of its own value as on account of the inordinate value that has been put upon it elsewhere, which is, I think, utterly disproportioned to its true value.

Mr. SOLICITOR GENERAL. It may be; it is not for me to say how far the court will be bound by that case. I should be sorry to rest my argument upon that case; I have good ground without it. I merely use the case as an illustration of my argument; but I think the case cannot be put lower than this; it holds that "fit out" and "arm" do not mean the same thing; that "fit out" means something less than "arm."

Mr. BARON BRAMWELL. I think it would inevitably be so. I have felt considerable difficulty in this case from a want of knowledge almost of what a ship of war is; but I conceive that a vessel might be fitted out so as to be in a condition to commit hostilities without being properly armed. Suppose, for instance, she had a large crew on board, and she had a large quantity of muskets and cutlasses.

Mr. SOLICITOR GENERAL. Yes; or she might be fitted out to cruise for a voyage of observation against the enemy. The words are, "cruise or commit hostilities." She might be fitted out to cruise without any arms, perhaps, against the enemy; she might carry a large crew supplied with rifles, and so might be extremely effective against an enemy, and especially against an uncivilized enemy, although there were no guns on board her.

Mr. BARON BRAMWELL. In Quincy's case it was laid down "that if the jury believe that when the Bolivar was fitted out and equipped at Baltimore, the owner and equipper intended to go to the West Indies in search of funds with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her, to go to the West Indies to endeavor to raise funds to prepare her for a cruise, then the defendant is not guilty." Then apply that reasoning to this case. If the jury believe that when the Alexandra was fitted and equipped at Liverpool the builder and equipper intended to take her to the Azores, and deliver her to the confederate government, in order that they might arm and equip the vessel, but the builder and equipper had no present intention of using or employing the vessel as a privateer, but intended her, when equipped, to go to the Azores, to endeavor to hand her over to the confederate government, then the defendant is not guilty.

Mr. SOLICITOR GENERAL. Your lordship sees that in that case the equipper was the person who had the control over her, and was to use her as a privateer; she was not ordered by any foreign government—he was the person to use her.

It may be as well for me to say a word or two more upon the question of intention. The court appears there to have considered that inasmuch as the equipper, having the sole control over her, had not made up his mind at Baltimore whether he would use her as a privateer or not, his mind being in this state, "If I can get funds on my arrival at St. Thomas, I will use her as a privateer; if not, I will go on a commercial voyage," they say there was an absence of the *mens rea* at Baltimore when the vessel started, and that it was not a present intention—perhaps the more accurate language might be, that it was not a fixed and absolute intention to employ her as a privateer, but a speculation that she might be so employed. "I may or I may not employ the vessel on a hostile cruise," was what Quincy thought; that I apprehend is the explanation of that case; but if the vessel had been ordered by the agent of a foreign government with a clear and fixed intention to use her as a cruiser, that would have made all the difference.

LORD CHIEF BARON. Do you not see what a loop-hole that leaves?

Mr. SOLICITOR GENERAL. It does. I agree to that, and I am not quite sure that we who are not bound by those cases should quite assent to the doctrine they lay down. We must all recollect that these are the decisions of a neutral—a nation whose normal state has been neutral. I am not quite sure that we, whose normal state has been belligerent, should quite agree to those decisions.

LORD CHIEF BARON. Our normal state is not belligerent.

Mr. SOLICITOR GENERAL. It has been; I hope it will not be; we have been concerned in most of the great continental wars.

LORD CHIEF BARON. Great Britain has been at peace during half of my lifetime.

Mr. SOLICITOR GENERAL. I am speaking of before that. In most of the great naval wars we have had something to do. I do not say all. The Americans as a rule have been neutral; they have considered themselves as a neutral nation, whose policy it has been to preserve their neutrality and avoid war as far as possible. Their distance from Europe has enabled them to do that; we, on the contrary, have been drawn into European wars, and most of our international law has rather been laid down from the belligerent point of view. All our prize law, all the decisions of Lord Stowell, are the decisions of a belligerent, and the greater part of the international law we have contributed to make has been contributed by us as belligerents.

LORD CHIEF BARON. Some of our decisions very likely have what painters call a "glazing" of a belligerent character.

Mr. ATTORNEY GENERAL. Yes, and the others may have a glazing of neutrality. I

am far from saying that we should be bound or inclined, supposing we were belligerents to allow the foreign enlistment act to be frittered away by another country, as was allowed in the case of Quincy, and in the case of the Santissima Trinidad.

Mr. BARON BRAMWELL. Was Quincy convicted?

Mr. SOLICITOR GENERAL. He was acquitted on the facts, (Guinett was convicted,) the jury, no doubt, believing that he had no present intention.

This brings me back for a moment to the question of intention. I am not going to add to the observations I have made upon that point, except this, that the intention must be a fixed and decided one; that is according to the American authorities; it must not be what is called a contingent intention, which is, strictly speaking, no intention at all. That explains Quincy's case, and it also explains the case of the Santissima Trinidad. The case of the Santissima Trinidad, which has been quoted very much out of doors as a case permitting any ship of war to be equipped under a contract with a belligerent, is a case which, it appears to me, has led to very great misapprehension, and it may be convenient for me here to say a word or two with respect to that case. That case is in 7th Wheaton, and the judgment of Mr. Justice Story is at page 334, and it is also printed in the appendix to the report of the trial. The facts of that case are stated very shortly. I am now referring to it to illustrate what I have to say upon the subject of intention. There a vessel sailed from Baltimore undoubtedly equipped, and armed and manned, and she was sent by the owner to Buenos Ayres, with instructions to the captain to sell her if he could get a good price for her, and I suppose not to sell her if he did not. She was sold to the government of Buenos Ayres, who commissioned her as a privateer. She subsequently returned into the American port, where she augmented her force, not by the way by adding any guns, but merely by taking in spars and stores, and enlisting some men; and the judgment of the court, as your lordships are aware, was adverse to the vessel on the ground of the augmentation of her force; that is to say, the prize she had made was restored; therefore what is said by Mr. Justice Story upon the subject of her first equipment was not necessary to the decision of the case.

LORD CHIEF BARON. It was not necessary to the decision, but that makes no difference, because you may refer to it merely on the personal authority of the writer; and then there is no distinction between what is *ad rem* for the purpose of the judgment, and what is not. Where you refer to an authority in our own law, it is not unusual, and no doubt it is a very proper remark to make where it is applicable. "This is merely *obiter dictum*"; it was not necessary for the judgment that the judge should say that," and it may be taken as accurately describing what passes in the mind of the judge when he is giving judgment. It must be presumed that as to those matters which are absolutely necessary to the judgment, and upon which the decision is founded, the judge takes great care, the highest possible care; but as to other remarks that are made, not for the purpose of the decision, but as illustration, it may be presumed that he draws from the resources of his own mind, but without the same extreme accuracy of attention which he would give to those matters which are the very foundation of the judgment he is pronouncing.

Mr. SOLICITOR GENERAL. No doubt that is so. I am very far from seeking to undervalue the high authority of Mr. Justice Story. I merely make the remark that the statement referred to was not absolutely necessary for the decision of the case. At the same time it decides, no doubt, one point of the case; I admit that. What he says at page 340 of Wheaton's report is this, "The question as to the original illegal armament and outfit of the Independencia may be dismissed in a few words. It is apparent that, though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure; contraband indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage, she would have been justly condemned as a good prize, and for being engaged in a traffic prohibited by the law of nations. But there is nothing in our laws or in the law of nations that forbids." He must mean in the sense which Mr. Baron Bramwell put upon it, because he has just said it was traffic prohibited by the law of nations, which, at first sight, seems a little inconsistent. "But there is nothing in our laws or in the law of nations that forbids our citizens from sending armed vessels as well as munitions of war to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation. Supposing therefore the voyage to have been for commercial purposes, and the sale at Buenos Ayres to have been a bona fide sale, (and there is nothing in the evidence before us to contradict it,) there is no pretense to say that the original outfit on the voyage was illegal, or that a capture made after the sale was, for that cause alone, invalid." Now this passage has led to more misapprehension than almost any passage which has been quoted from any American writer, and this has done duty in all the newspapers, as your lordships are aware, again and again. I apprehend the meaning of the passage to be merely this, there must be the *mens rea*, there must be a guilty intention, at the time the vessel leaves the American port. The person who equipped the Independencia had not such an intention; at all events not a fixed intention; because he

sent out the vessel, certainly not to commit hostilities on its road, but to Buenos Ayres, to get a price for it; and if the master could not get a good price for it he was not to sell it. Therefore, there was no definite intention on the part of the equipper; that is the explanation of the case. There was no sufficient proof of *mens rea*. But suppose it had appeared that the vessel had been ordered by the Buenos Ayres government, there would have been *mens rea* on the part of that government or its agents that would have forfeited the vessel quite independently of any question what the equipper did or did not intend; but if he had furnished the vessel under such an order, it would have been considered that he did intend also. I can very well suppose that this passage may be misunderstood by persons not applying their minds to the case. It is very natural to say, if a man sends a ship to Buenos Ayres to sell it, why should not he build it to order? That makes all the difference. If he builds it to order, the party ordering has the *mens rea*, which forfeits the vessel. These cases undoubtedly go some way to open a door to evasions of the act; we cannot conceal that from ourselves, and I am far from saying that we should be bound by them.

LORD CHIEF BARON. You say it was to be taken to Buenos Ayres to get a good price. Suppose a man were to make a vessel of war, and to arm her, and were to send her out merely with a crew adequate to sail her with these directions, "Take her if you can to such a port, (suppose it were some port either in the northern or southern States,) and get what price you can for it." Suppose he sells her to one particular belligerent power, not to either, would that be a commercial or warlike transaction?

MR. SOLICITOR GENERAL. That is the case of the Independencia.

LORD CHIEF BARON. It is not quite that case; she was to be sold to anybody.

MR. SOLICITOR GENERAL. No; to be sent to Buenos Ayres and sold there.

LORD CHIEF BARON. If he could get a good price for it. Suppose he was told to take it to the northern States and sell it for what he could get.

MR. SOLICITOR GENERAL. I should not think that would make any difference; probably not.

LORD CHIEF BARON. Yes, because when the owner sent it to be sold to the northern States, he must perfectly well have known that they would use it for hostilities against the South.

MR. SOLICITOR GENERAL. He could not possibly tell whether they would buy it or not.

LORD CHIEF BARON. There could not be any doubt as to the purpose for which it was to be used; if a man took a vessel of war *flagrante bello*, to one of the belligerents to be sold to them, to say he did not absolutely know that they would use it, would be absurd.

MR. BARON PIGOTT. In all probability the jury would have found that that was an idle pretense.

MR. SOLICITOR GENERAL. The question is, the intention.

LORD CHIEF BARON. It would be sold in order that it might be used if they liked it.

MR. SOLICITOR GENERAL. I should think the direction to the jury would be, do you believe he had a fixed intention?

LORD CHIEF BARON. The word "fixed" is not in the act.

MR. SOLICITOR GENERAL. I only use it because it is used in the case of Quincey.

MR. BARON PIGOTT. You had better say "intention."

MR. SOLICITOR GENERAL. I only used it because it is used in that case. Did he intend that it should be employed by the foreign belligerent power, and then the jury would say whether he had that intent or not; but I believe the meaning of Mr. Justice Story to be, that in this particular case there was not sufficient proof of intention to come within the meaning of the foreign enlistment act. That I apprehend to be the scope of the case, and no more, and I should be very sorry to extend that case; it appears to me to have gone rather far, I confess.

MR. BARON BRAMWELL. It is a case rather against you; you do not cite it in your favor.

MR. SOLICITOR GENERAL. No, my lord; I am citing it as the strongest case that has been used for the opposite view. I am endeavoring to explain it upon this ground, that upon the particular circumstances of that case the court thought there was not sufficient proof of a guilty intention, but I should be sorry to see that doctrine extended, and if the same case arose in these courts it might be a question whether the doctrine would be carried so far; but I was going to observe upon this case that it would be perfectly clear, I apprehend, that if the ship had been ordered by the Buenos Ayres government the offense would have been complete, and the ship would have been forfeited. I cannot doubt that for a single moment. I have observed upon this case for the purpose of endeavoring to show the precise extent to which it goes, and drawing the line beyond which it does not go. The cases of Quincey and the Santissima Trinidad upon the subject of intent, I apprehend, established this doctrine, applicable to the particular facts in those cases, that there must be a positive intention and not merely a wish, not merely a speculation that the ship may possibly be used for a hostile purpose. And let me illustrate it in this way. One or two illustrations have been put by the lord chief baron which may be used as pertinent to the case.

Mr. BARON BRAMWELL. I cannot help calling your attention to what Mr. Justice Story says here in speaking of the *Altravida*. He says: "Here, then, is complete evidence from the testimony introduced by the claimant himself, of an illegal outfit of the *Altravida*, and an enlistment of her crew within our waters for the purposes of war."

Mr. SOLICITOR GENERAL. That was when she came back, when her force was augmented; and upon that she was condemned.

Mr. BARON BRAMWELL. What I meant was that he seemed to consider that that was a necessary thing to make the contract illegal, that it should be "for the purposes of war."

Mr. SOLICITOR GENERAL. It might be, my lord, under the words "equip" and "arm." Your lordship sees, I think, how this case arose. The vessel was no doubt originally equipped and armed, and sent from Baltimore to Buenos Ayres with the instructions which I have mentioned; she was not condemned on that ground, but she returned to America, and there she received some equipments, but not of a warlike character, no more guns. She took out her guns, and put them in again, but she received some other equipments and she got some men for her tender, and upon those grounds she was condemned; she was condemned by Mr. Justice Story on the ground that her warlike force was augmented, but he says: "With respect to the first voyage I do not condemn her upon that ground, because there was not, as I suggest, sufficient proof of intention on the part of the owners to employ her in warlike service at the time she left America." That, I apprehend, is the whole scope and effect of the case; but if, on the other hand, she had been ordered by a foreign government, unquestionably she would have been condemned for her original outfit. Then, my lord, I might illustrate this case of *Quincy* by a case which was suggested by his lordship. Suppose we were to enact that if a man fits a skeleton key for the purpose of its being employed by a burglar in housebreaking; suppose he makes the key without any communication with the burglar at all, and merely sends it for sale in the event of his getting a good price for it, it may be said in his favor, you do not prove a guilty intention; but if the burglar orders it, then it is forfeited at once, or if the maker supplies it to order, it is forfeited both on the ground of the *mens rea* on the part of the burglar and of himself. So if he makes it to a certain extent, but is not quite certain whether he will finish it or not. That, I think, is *Quincy's* case. He goes to a certain point, and he says: I have not quite made up my mind whether I will finish it for the purpose of using it in this unlawful trade, or for use in some honest trade. You give him the benefit of the doubt; there is a *locus penitentie* if he has not formed a decided intention. That, I apprehend, is the explanation of those two cases. I have reverted to that point for a moment in consequence of a remark which fell from Mr. Baron Bramwell with reference to the object and intention, and with that branch of the argument I have now done; there must be a fixed intention, and not a mere wish or desire, or calculation of possibility.

Mr. BARON CHANNELL. There must be something which is intention.

Mr. SOLICITOR GENERAL. Yes, as distinguished from what is not intention; that really is the proper way of putting it; a mere speculation is not intention, and the *Independencia* was sent on speculation. If a man builds a ship and sends it abroad upon mere speculation, that is not such an intention as, according to the American courts, has been held to be enough.

Mr. BARON CHANNELL. The attorney general, in summing up, distinctly puts that to the jury.

Mr. SOLICITOR GENERAL. Yes, my lord. And one word with respect to the mischief contemplated by the act. It is not very likely, when you come to practice, that people will very often build or equip ships upon mere speculation, without any communication with foreign governments; they run a great risk in doing it; they run the risk of detection, and they run the risk of the vessel being stopped on the sea, which is a risk far greater than that applicable to arms and ammunition. Then they run the risk of, when built, the vessel not suiting or not fetching a proper price; so that practically, when you come to consider the mischiefs to be guarded against, it seems to me rather a remote mischief that builders should build ships upon speculation; but the real mischief to be guarded against is that which is likely to happen, namely, a foreign government, or their agents ordering vessels, and vessels being built to their order. That is what has happened here, no doubt, and when my learned friend said that the foreign enlistment act had not been enforced in this country before, my answer is, that when it was passed it was supposed to be effectual, and that our citizens have not violated the provisions of the act, so far as we know, until now, and therefore if the present proceeding is new, that is because the offense is new which gives rise to it.

Now, my lords, I revert to that part of the case upon which I was speaking before, namely, what must be done in pursuance of the intention. The act says, a person is to "equip, furnish, fit out, or arm." I had got so far as this, and I do not wish to go over the same ground again; it is conceded that a vessel need not be so far equipped as to be in a condition to commit hostilities. I have said as much as I mean to say upon that, in other words, that it is not necessary for the ship to be armed. Then, my lords,

we come to this—what must be the equipment? and here we come to a tolerably distinct issue. My learned friends say that the equipment must be of a distinctively warlike character, though not amounting to actual arming. I say the character of the equipment must be determined by the intention of the equipper, and that is the dispute between us.

Upon that, my lords, I will take leave once again to refer to the case of the "*United States vs. Quincy*," and I think it is the last time I shall have occasion to touch upon that case; you will find it at page 79^a of the appendix. What the court say is this, "The offense consists principally in the intention with which the preparations were made. These preparations, according to the very terms of the act, must be made within the limits of the United States, and it is equally necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States, and this must be a fixed intention." (That is the reason why I used the term "fixed" before "not conditional, or contingent, depending on some future arrangements.") This intention is a question belonging exclusively to the jury to decide. It is a material point on which the legality or criminality of the act must turn, and decides whether the adventure is of a commercial or warlike character." Now, I submit to your lordships that that is correct. As I before observed, I can quite understand the position that a vessel must be equipped so as to commit immediate hostilities; but what is called an equipment of a warlike character, as distinguished from arming, appears to me rather doubtful. I have some difficulty in defining it. It would apply, it appears to me, to very few matters; it would apply possibly to ring bolts for guns, or slides on which guns might move, that would be pretty nearly nearly all the equipments which you could call equipments of an exclusively warlike character.

My lords, that construction would narrow the effect of the act very much. Let us consider the effect of that construction, and I will take leave to refer first to that provision which prevents a ship being equipped, furnished, fitted out, or armed in order that she may be used as a transport or a store-ship. Now, my lords, it appears to me that if we are to adopt the doctrine of equipments exclusively applicable to some particular object, it would be very difficult to fix upon what equipments would be exclusively applicable to a transport or a store-ship.

LORD CHIEF BARON. No doubt you may use all that by way of illustration, but at the trial, and I think during this argument, the question of its being a store-ship or transport did not arise.

MR. SOLICITOR GENERAL. I do not know that it did, my lord.

LORD CHIEF BARON. It was entirely given up. The attention of those who argued the point, and of myself who directed the jury, was limited to the case of an intention to cruise and commit hostilities.

MR. SOLICITOR GENERAL. No doubt; we do not in the slightest degree say, my lord, that there was any case against the ship as a transport or store-ship. I am dealing now with the construction of the act, quite independently of its connection with any particular facts; we have the act before us and we must put the best construction we can upon it. I am taking this provision which contains the words, equipped, furnished, fitted out, and armed for the purpose of being employed "as a transport or store-ship;" what does that mean? Does that mean equipment (for I will take the word equipment alone) of a character peculiarly adapted to a transport or store-ship?

LORD CHIEF BARON. I own I should rather adopt the policy of the learned attorney general at the trial. I should say, when the case of a transport comes before me I will form an opinion upon it, but when the case of a transport or store-ship is avowedly out of the question, I do not feel myself called upon to say anything upon it to a jury or anybody else.

MR. SOLICITOR GENERAL. In forming an opinion upon the construction of one part of this section, it is material to consider the other parts of it.

LORD CHIEF BARON. If you were to write a treatise upon the statute, it would be very important, but here we are discussing only what relates to cruising and committing hostilities.

MR. SOLICITOR GENERAL. I am discussing what the word "equip" used in the act means.

LORD CHIEF BARON. It may mean one thing for one purpose, and another thing for another.

MR. BARON PIGOTT. The word "arm" cannot apply to a store-ship.

MR. SOLICITOR GENERAL. Clearly not.

LORD CHIEF BARON. It is of course indifferent to me whether the matter is in your favor or against you. I am merely looking to what I consider to be the truth.

MR. SOLICITOR GENERAL. I am quite sure of that, my lord, but I would venture to think when we are endeavoring to construe the meaning of the words "equip and arm," and so on, it is not immaterial to refer to what follows in the same clause; and with your lordships' permission I will refer to what follows in the same clause. My conten-

tion is this, that if you construe the meaning of the word "equip" in the limited manner which my learned friend contends for, viz., as having *per se* peculiar reference to the prohibited act independently of intention you land yourself in very great difficulty; if you do not consider intention, in fact you repeal the act. If you apply this rule to a transport or store-ship, it would be almost impossible, or it would be very difficult, at all events, to suggest any peculiar equipment applicable only to a transport or a store-ship, and not to any other vessel.

MR. BARON BRAMWELL. I do not understand that anybody says that the thing would not be within this act of Parliament unless it were exclusively calculated for such an object; for instance, if you were to put a great quantity of water on board a vessel, and if you had a great number of hammocks there, which, for anything I know, might make the ship applicable to the purpose of a mere passenger ship, still, if the intent with which it was done was that the ship should be used as a transport, it would be within the act of Parliament, and the party doing it could not say, This is not an equipping exclusively of a store-ship or transport character.

MR. SOLICITOR GENERAL. I say the test, and the only test, is the intention; that is my argument.

MR. BARON BRAMWELL. What they say in answer to that is, that it must be an intention and something calculated to carry that intention into execution.

MR. SOLICITOR GENERAL. Yes, my lord, just so; there I join issue.

MR. BARON BRAMWELL. I do not think anybody says that it must be something which can carry that intention only into execution.

MR. SOLICITOR GENERAL. I took down what my learned friend Sir Hugh Cairns said he deduced as propositions from the summing up; and I understood him to say that one of the propositions was this, that although the vessel need not be armed, still the equipment must be of a warlike character.

LORD CHIEF BARON. The equipment of a transport so as to make it available in a warlike expedition for the purposes of a transport is of a warlike character. I am merely giving you what I suppose Sir Hugh Cairns meant, namely, that when you equip and fit out a transport as a transport, to be used as a transport in a warlike expedition, you do fit it out in a warlike character.

MR. SOLICITOR GENERAL. I do not know that my learned friend Sir Hugh Cairns meant to say that the equipment of a transport must be of a warlike character, but he meant to say that the equipment of a vessel to cruise must be of a warlike character, that is their contention; and I say that it is not so; that is to say, it is not so in one sense although it is in another. If by warlike character you mean the character put upon it by the intention, I agree. And then, in this case there was manifestly that character beyond all doubt. But if by warlike character you mean something which, independently of a proof of intention, is of a warlike character, then I differ; and that really is the point.

MR. BARON BRAMWELL. That is the question.

MR. SOLICITOR GENERAL. Yea, my lord. By a "warlike character" my learned friend means something which, independently of the intention, would appear to be applicable to war, and if not exclusively applicable to war, at all events more applicable to war than to other purposes, unless he means nothing. I do not see what else he can mean than that, without acceding to my proposition. I say that if there was any equipment whatever, and you show that it was intended for warlike purposes, that will do. My learned friend says, no, it must be an equipment, which would be a proof of an intention for war to constitute a warlike character. There I differ, and I am endeavoring to illustrate the construction of the statute by applying this doctrine to transports or store-ships. With respect to transports and store-ships, it appears to me impossible to contend that the equipment must be of a character peculiarly suitable to transports or store-ships. I say, that an "equipment," *ancipitis usus*, is explained by intent. You find a ship fitted up to carry a vast number of people, that might either be for emigrants or for troops. Surely, if you show that the intention was to carry troops, that would at once determine the nature of the equipment, and make it an equipment as a troop ship. I apprehend that to hold anything else would be in effect to repeal this part of the statute.

So, again, with respect to a store-ship, the kind of equipment which would enable a ship to carry government stores would enable her to carry other stores. The equipment must necessarily be *ancipitis usus*. The character of the equipment is proved by the intent. Suppose you prove that certain fittings in a hold are made in a manner suitable to carry government stores, yet they might carry five hundred things besides; if you prove that they are intended to carry government stores, that is an equipment as a store-ship. Any other construction would render it impossible to prove that a ship was intended for a transport or a store-ship. I take it that any merchantman might be taken, and with very few adaptations indeed made applicable to the purposes of a store-ship. If you could not explain those adaptations by the intention, you never would be able to show any equipment at all applicable to a transport or store-ship. Then, my lords, I contend that to maintain that equipments are not explainable by evidence

of the equipper's intent, but must, on the face of them, be adapted for any particular purpose, is contrary to the true construction of this statute, and would, at all events, defeat the intention of the provision with respect to transports or store-ships.

Now, my lords, I next come to the second object with which it is forbidden to equip a vessel, namely, to be employed in the service of a foreign government, to cruise and commit hostilities; and I say, there you must not require any distinctive equipments or preparations peculiarly adapted on the face of them, and necessarily so, to cruise or commit hostilities, but that any equipment must be judged by the intention. In the first place take the word "equipping." Equipping would, I suppose, include manning, as my learned friend the attorney general has suggested. You find a crew hired; that is in itself doubtful; they may be hired to take care of the ship, or to take care of the cargo, or to fight. Supposing you prove that they were intended to fight; I say then, that becomes an equipment in violation of this act, although there is nothing on the face of their engagement to show whether they were intended to fight or not. But the intention, as is said in the case of Quincy, determines the character of the act. I do not see what other test you can have but the intention.

My lords, I might put a number other cases. Take the case of a merchant vessel that is lengthened, and has new boilers put in her in order to give her greater speed, for the purpose of capturing other vessels, she not being useful for that purpose before. If you showed that she was lengthened and additional boilers put in her, and so on, for the purpose of enabling her to capture other vessels, and if that was stated by the equipper, I should say that was an equipping with the intention that she should be employed to cruise and commit hostilities, although it would be *ancipitis usus*, unquestionably. If I might again borrow my lord's illustration, take the case of a burglar. Suppose he goes and gets a pair of list shoes and a chisel, and puts them in his pocket for the purpose of committing a burglary; I say he is burglariously equipped, although the articles may be *ancipitis usus*. The list shoes anybody who has had the gout knows are exceedingly useful things to wear; or they may be for the purpose of preventing an invalid from hearing your steps; but if they are for the purpose of enabling the man to break into the house, the purpose changes the character of them, and they are burglarious equipments.

Mr. BARON BRAMWELL. I am not sure that there is not a case against you there.

Mr. SOLICITOR GENERAL. I am supposing the shoes to be forfeited.

Mr. BARON BRAMWELL. There was a case (I do not know whether it is worth while referring to it) in the court of criminal appeal, where upon an indictment under the statute 24 and 25 Victoria, chapter 97, which renders it a misdemeanor to be found at night armed with intent to break or force into any house or building, and commit a felony therein, "it was held to be necessary that a person should be proved to have had an intent of breaking into or entering some particular building;" the proof of a general intent to enter houses was not sufficient.

Mr. SOLICITOR GENERAL. I was assuming the proof of an intent to break into a particular house; it would not make the least difference to my argument; I will assume the man to get those equipments, as I will call them, which are *ancipitis usus*, and perfectly lawful to an honest man, with the intention of breaking into a house; I should say that the character of the equipments is determined by the act, and they would be, to use the phrase I employed before, burglarious equipments. I do not see what other rule of construction is really applicable or leads to any clear or definite solution of the meaning of this act.

My lords, I may remind you that we desire no more than to take the words of the act; but my learned friends desire to interpolate words. My learned friend said that the equipments, &c., must be as a ship of war; that was several times said by my learned friend. There are no such words in the act; the words are, "equip, furnish, fit out, or arm;" if that stood alone, any equipment enabling a vessel to sail would be of course prohibited.

LORD CHIEF BARON. There are other words. If I recollect rightly the argument of Sir Hugh Cairns, it was this: she must be "fitted out" and so on, in order that she might cruise and commit hostilities.

Mr. SOLICITOR GENERAL. Just so, my lord, in order that she may be employed—

LORD CHIEF BARON. Sir Hugh Cairns's argument was this: If she is not fitted out so as to be by possibility able to cruise and commit hostilities, she is not fitted out within the intention of the act; that is his argument.

Mr. SOLICITOR GENERAL. Yes, my lord.

LORD CHIEF BARON. Then, do not you see that Sir Hugh Cairns introduces no word into the act of Parliament at all? What he says is this: You cannot either fit out, furnish, or equip a vessel that it may cruise and commit hostilities unless it is in a condition to do so.

Mr. SOLICITOR GENERAL. I know he says that, my lord; you see how far that would take him.

LORD CHIEF BARON. Do not suppose that I am adopting his view at all. I am pointing out that Sir Hugh Cairns did not introduce any words into the act of Parlia-

ment. It is a mistake, I think, to suppose that the argument of Sir Hugh Cairns requires the introduction of any words; he says, If the vessel is to be fitted out, furnished, or equipped, in order that it may cruise or commit hostilities, it must be fitted out in a manner to do so; otherwise the thing is not done which the act requires. That is his argument.

MR. SOLICITOR GENERAL. My observation referred to what was said by my learned friend Sir Hugh Cairns, and I took down his words, that she must be equipped "as a man-of-war;" I was only dealing with that at this moment. I have already said, that in order to contend that she must be in a condition to cruise and commit hostilities, he must contend that she must be armed. I have before dealt with that argument.

MR. BARON CHANNELL. I should like to call your attention to a difficulty which strikes me. Suppose this information had not in terms proceeded against any person of those whom I have called the subordinate actors, but had gone only against those who were the principal actors; and suppose that, instead of charging that there was an equipment here with intent that the vessel should be employed in cruising and committing hostilities, it had taken one of the other classes, and charged it to be an equipment with intent that the ship should be employed as a transport or store-ship, and had alleged, not that anybody assisted or endeavored to do that, but had alleged the act itself, the equipping of the ship as a transport ship, or the equipping of it as a store-ship; what I understand Mr. Mellish's argument to be is this: If you had merely alleged in your information, you have equipped the ship as a store-ship, that would not do; you must go on to add something further, namely, that it was the intention that the vessel so equipped as a store-ship should be employed in a particular service, and all those allegations must be introduced into the information or indictment. Before you get to any evidence as to intent, or to see what the effect of the evidence as to intent may be, you must first establish, by proceeding against the principal actors, that there was an equipping of the ship as a store-ship. His argument, as I understand it, comes to this: dismissing for a moment all question of intent, you must see in the ship itself some equipment or partial equipment of the ship in the character of a transport or a store-ship, and then you will have to go further into the inquiry as to intent.

MR. SOLICITOR GENERAL. That appears to me to be a difficulty.

MR. BARON CHANNELL. Your argument is that an equipment may be for one or the other purpose, but that the intent gives such a character to the equipment that it is then made to be an equipment for a transport ship and in order to be so employed.

MR. SOLICITOR GENERAL. Yes, my lord, the intent is that she shall be so employed; and I say when you see certain equipments (I am now dealing with the case of transports or store-ships) which might do for a transport or store-ship, or which might do for an emigrant ship or a merchant vessel, you determine the character of the equipment by the intention, and if she is intended to be employed in the service of a foreign government as a transport or store-ship by one belligerent against another, that equipment is enough. My learned friend again and again used the expression "*as a transport*," or "*as a store-ship*," or "*as a ship of war*," as if those expressions were in the act. Those expressions are not in the act; there are no such expressions in the act. I am only dealing with the observations of my learned friend so far as they relate to those expressions.

MR. BARON CHANNELL. Just so. You are right. It is not to equip a ship as a transport; it is to equip a ship to be employed as a store-ship or transport. I just gave you what had occurred to my mind (do not suppose I am intimating any opinion) with regard to the information. I understand it to contain three propositions: first, to equip; secondly, subject to your last observation, to equip a ship as a transport or store-ship; thirdly, with intent that she should be employed in a particular way. Then Mr. Mellish contends that the second proposition is not made out if you show some equipment applicable to any ship, but not exclusively to a transport or store-ship. When the government take up merchant ships to transport troops or convicts there are a number of temporary rooms fitted up for the accommodation of the men. You may at once say, I see that that ship is fitted up to carry convicts or troops, because she is not fitted up as a vessel of war nor as a merchant vessel; she has only stowage room enough to carry provisions. Upon such facts he would say, I should contend that she is fitted up as a transport ship or as a ship to carry stores; that is what he says.

MR. SOLICITOR GENERAL. It appears to me that there is a good deal of difficulty about it, as I have endeavored to show your lordships. If I may express it in these words, I think I shall meet your lordships' meaning, and that of my learned friends. There must be something in the equipments on the face of them purporting to be peculiarly adapted for a transport, or a store-ship; it appears to me that it might be extremely difficult to say what equipments on the face of them would bear such a character.

MR. BARON CHANNELL. Suppose there is no war going on at all, so that there could be no hostile cruising, or any employment of the ship as a transport, or for aggressive purposes, would you then say that that ship was fitted out as a transport or store-ship? That is the difficulty.

Mr. BARON PIGOTT. Mr. Mellish gave an illustration, that you must find harpoons on board a whaler; that is a very good illustration.

Mr. SOLICITOR GENERAL. Yes, my lord; or it might be said, if you find pontoons on board a store-ship, that would show that the stores were intended for an army; that would be a very decided case, but there would be possibly very few such cases. Moreover the harpoons, in the case of the whaler, would be, I should think, hardly fittings; they would be in the nature of arms for a particular purpose taken in the ship, and if there were fittings particularly adapted for the stowage of harpoons, it would be an equipment of a distinctive character. But I do not think you could expect that often. The same adaptations that would do to carry troops, infantry we will say, would do for emigrants. It would be very difficult to distinguish the one from the other. I ventured to put a case to your lordships. Suppose equipments, as to which it would be difficult to say whether they are intended for emigrants or troops, of which possibly the distinctive character could not be determined till the troops came on board, would you wait till the troops were on board; would not you seize the ship supposing the equipper were to say, I mean those equipments for troops? I take the case of what happened here, or nearly the same. "I mean those for troops," says the equipper. Would not that be an equipment for troops? I apprehend that it would be the best possible evidence of the character of the equipment, and that the character *per se* must generally be extremely doubtful.

Now, my lords, passing from a transport to a store-ship, what would you expect to find? She might carry any sort of stores, not necessarily shot or shells, but boots and clothing, or anything else; the same fittings that would do for boots and clothing would do for almost any kinds of merchandise. Are you to wait till the boots and clothing are put on board to determine the character of the equipment? No. Your object is prevention. Supposing the equipper said, "I intend these fittings for boots and trowers for troops," I imagine that that intention would determine the character of the equipment. That appears to me to be a much plainer construction, and a much easier and simpler construction, than to say there must be something in the equipments, on the face of them, indicating that they are meant for a particular purpose. That I say is not in the words of the act, the words of the act are not "*as a transport or store-ship*," &c., but "in order that the vessel may be employed in the service of a foreign prince or state," for a certain purpose. Then if you have the two—I am now dealing with the literal words of the act—if you have the equipping, and if you have also the intention that the vessel shall be employed in the service of a foreign prince, you have the two things mentioned in the act concurring; you do not want more. So that, as I venture to put it, my learned friend's interpretation does virtually require an addition to the words of the act.

Upon the subject of equipping, I may be allowed to say that it does not appear to me that equipping is necessarily confined to what is additional to structure, but I should contend with my learned friend the attorney general that it is applicable to mere structure. I do not wish to repeat what he said upon the subject, that supposing always you prove a design and intention that the vessel shall be employed to cruise and commit hostilities, and that she shall be equipped, anything done in pursuance of that design, even in building the vessel by contract, adapted to that equipment, and in furtherance of that design, is within the meaning of the act.

If the intention is to stop at building, it may be that building would not be within the meaning of the act, but if the intention is to fit out, (I am using that as the most comprehensive word,) then anything done in pursuance of the intention would be a fitting out. And without recurring to the illustrations I have before put, I venture to think that, with regard to transport or store ships, the making the decks wider in order to carry horses, although that would be a part of the structure of the vessel, would still be an equipment of the ship as a transport or store-ship. If you wish the vessel to make a capture, and you alter the shape of her prow, and make her longer, and add a screw propeller, those are structural equipments *per se*, *ancipitis usus*, but they are for the purpose of her cruising and committing hostilities, and they are therefore equipments within the act. That is the interpretation I venture to put upon the act, and I submit that there may be equipments by construction as well as equipments by the addition of hammock nettings and a variety of articles of that sort. Indeed, in this case there were unquestioned equipments, I take it, and there can be no doubt whatever that the ship was intended to be so far equipped as to take the sea. No human being can doubt that; but she probably was not intended to have her arms put on board her; that, I think, is a fair supposition. If any of those equipments were *ancipitis usus*, that would be explainable by the intention. And I submit that the true construction of the act is to explain the nature of equipments which are ambiguous by the intention of the equipper.

My lords, I will only observe further upon this, that two or three cases in the United States decided upon the construction of their slave trade acts quite bear out this view. My learned friend, the attorney general, referred to one of those cases yesterday. That was the case of the United States against Gooding. I will refer to that again. I have

no doubt that is in your lordships' recollection. That was a case of an indictment, and the indictment there was against Gooding for "fitting out;" that was the word used. I know that there are other words in the act. There are the words "build" and "prepare," but "fitting out" was the charge. Gooding fitted out, although he used no equipments peculiarly calculated for the slave trade.

The same doctrine was held in the Plattsburg case, in the tenth volume of Wheaton's Reports, page 133. I am now about to quote from the judgment.

MR. BARON CHANNELL. Does that give the words of the act?

MR. SOLICITOR GENERAL. The words of the act are, as I recollect them, "build, equip, fit out, or otherwise prepare."

MR. BARON CHANNELL. Prepare for what?

MR. SOLICITOR GENERAL. For the slave trade; but I will give your lordship the words of the act; they were read yesterday by my learned friend the attorney general.

MR. BARON CHANNELL. When the learned attorney general cited the case yesterday, I had not the distinction in my mind so clearly as I have now, that it is not to equip a ship as a store ship, but to equip a ship to be "used or employed."

MR. ATTORNEY GENERAL. My lords, I find in the print of what I said to your lordships yesterday that the words of the act are stated from the act. This is the passage: "The act contains large words. It 'prohibited, under penalties, any citizen or citizens of the United States, or any other person or persons,' from doing these things: no such person 'shall for himself, themselves, or any other person or persons whatsoever, either as master, factor, or owner, build, fit,' I said that the word 'out' had slipped out there, for it is found in the subsequent words in all the clauses, therefore I read it as if it were there, 'fit out, equip, load, or otherwise prepare any ship or vessel in any port or place within the jurisdiction of the United States, nor cause any such ship or vessel to sail from any port or place whatsoever, within the jurisdiction of the same, for the purpose of procuring any negro, mulatto, or person of color from any foreign kingdom, place, or country, to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor.'"

MR. SOLICITOR GENERAL. "For the purpose," in that act, appears to be substituted for "in order that," in this. I apprehend the meaning will be very much the same. The case my learned friend yesterday referred to, as your lordships are aware, turned upon the meaning of "fit out," and that was an indictment. This was a question of the forfeiture of a vessel, and what is said in that judgment is this. I may remark that there was proof here of a barrel of handcuffs beyond doubt; but they say, "Assuming the equipments were all innocent in their own nature, that would not help the case, if there were positive proof of a guilty intention. The law does not proceed upon the notion that provisions or equipments which are adapted to ordinary voyages are not within the forbidding clause, if they are intended for the slave trade, nor is it necessary that there should be complete equipments for this purpose. It is sufficient if any preparations are made for an unlawful purpose. Such was the doctrine of this court in the cases formerly adjudged, and which were cited at the bar."

Now, my lords, I cannot help thinking that that is the obvious and rational construction, and it is in accordance with the construction of criminal statutes. The main thing to ascertain is the *mens rea*, and then the facts are judged by the light thrown upon them, and I cannot conceive any hardship upon anybody if what he does is viewed by the light of his intention. You must be always liable to error in determining what equipments are or are not upon the face of them fitted for a transport or store-ship, or for a ship of war. You may have difference of opinion and conflicting testimony, but if you once arrive at the fact that the man making them intended them for the one or the other purpose, it appears to me that you have the most complete evidence and the most satisfactory explanation of what the equipments are; and this construction meets what was intended to be provided against by the legislature. In fact, with respect to transports or store-ships, it appears to me that to hold that the equipments must, upon the face of them, reveal their intention, would almost be to repeal the act—you could not do it.

LORD CHIEF BARON. It is a little contrary to the general spirit of our criminal law to suppose that the most guilty intention will render an act a crime which is otherwise innocent. For instance, if you administer something which is not calculated to kill, however strongly you may believe it will have that influence in consequence of some magical ceremony which it has undergone, that is not a crime. It is not even a misdemeanor to administer, for instance, pills that have been exposed to the light of the moon at Candlemas, or gone through any other absurd ceremony for the purpose of producing what the party who administers them believes to be a poisonous effect. The administering of those pills would not even be a misdemeanor of any kind.

MR. SOLICITOR GENERAL. In those cases the things could not produce the effect, but here is a ship calculated to carry out the object, although it may be fitted also for other things.

LORD CHIEF BARON. You see, I am merely calling your attention to that portion of our criminal law, which certainly lays down this, that the most guilty intention will

not render an innocent act a crime. It may be very wicked, but it is not a crime. It may be said, you know, that a man who administers something which he thinks will kill, is as much guilty of an intention to murder as a man who administers prussic acid, or arsenic, or aconite.

MR. BARON BRAMWELL. I suppose you would contend that supposing an act of Parliament had made it criminal for any person to administer to any other person anything with intent to commit murder, then if a man gave the harmless pills that would be within the act of Parliament, and that the argument on the other side is pretty much the same as the argument would be there, if it were said, how could this be done with the intent, when it could by no possibility bring about the result.

MR. ATTORNEY GENERAL. If a man keeps house with the intent of defrauding his creditors, although keeping house is quite innocent in itself, yet the intent and the act together are made a crime by the law.

MR. SOLICITOR GENERAL. I was going to refer to the case that Mr. Baron Bramwell put, of a man being in the neighborhood of a house for the purpose of watching and so on; then the act is made guilty by the intention; the act itself is innocent, but the intention makes it guilty.

LORD CHIEF BARON. There the act is of a doubtful character; the keeping house with the intent of defrauding one's creditors is not innocent; it is an act of bankruptcy; you must take it altogether; but we have long ago come to consider an act of bankruptcy not a crime, and bankruptcy itself only a misfortune.

MR. SOLICITOR GENERAL. Certainly, my lord; but I was taking the case Mr. Baron Bramwell suggested, of a man watching outside a house with the intent to steal; then an otherwise innocent act becomes guilty by the intention, and you look at the intention to interpret the act. So here the act says you shall not do two things; you shall not equip, and you shall not equip with such an intention. So that if you show the equipment and show the intention, you show the two things which the act requires, and that is the simple construction which we put upon the act. And if you import into the act that the equipment must be upon the face of it such as would necessarily indicate the intention, you add provisions to the act which are not to be found in it.

Now, my lords, having said so much with respect to the construction of the act, I hope I have at least succeeded in making my view intelligible to your lordships, namely, that any equipment with the prohibited intention is enough. I now come to the evidence in this case, and I think it may be convenient to say a word or two about that before I proceed to the summing up. You have had the evidence very minutely brought before you by my learned friend the attorney general on one or two occasions, but I will state generally now what it was. I am ready to deal with either question, the summing up or the evidence, whichever might be convenient, first. I propose to say a word about the verdict being against the evidence before I proceed to the summing up. I am quite willing to take any other course if the court thinks it convenient.

LORD CHIEF BARON. Pray pursue your own course.

MR. BARON BRAMWELL. What appeared to me was, that as to the substance of my lord's summing up, we cannot possibly have a better authority than himself; and that the purport of his summing up was that the equipment did not come within the class of acts contemplated by the statute. He said that the act must be—I do not say an arming; on the contrary, he said it need not be an arming, but of a warlike character—something calculated to enable the ship to commit hostilities. I think that is so. That is the direction you find fault with, you know.

MR. SOLICITOR GENERAL. Yes, my lord; I was going to say a few more words about the direction. I was going to contend that the effect of some parts of the direction might be, though not open to direct exception, calculated to confuse the jury, and that the court might think it desirable to have a new trial, even if there was not an absolute misdirection. I was going to say a word upon that after touching upon the evidence.

LORD CHIEF BARON. That might be considered rather hard upon the defendants, and the rather as the attorney general, on the part of the Crown, certainly did not put forward any distinct proposition of law at the trial; and, therefore, if the complaint of want of proper direction and of full explanation arises on the part of the Crown itself, I think it would be rather too much to say that the defendants are to be put in peril a second time on that ground.

MR. SOLICITOR GENERAL. With great respect, my lord, I cannot accede to your lordship's statement that no proposition of law was distinctly laid down by the late learned attorney general.

LORD CHIEF BARON. I supposed you had not forgotten what I said upon that subject; I thought it right to refer to it and say so, because I have again looked over the whole of the proceedings on the trial, and I can find no instance of any distinct and clear proposition of law beyond this, that in the circumstances of the present case the Crown is entitled to the verdict, and that the jury ought to find that the vessel is forfeited.

MR. SOLICITOR GENERAL. I think, my lord, I can refer to one or two propositions of law very clearly stated by the late learned attorney general. I begin with one in page 226.*

LORD CHIEF BARON. Is that in the large edition?

MR. SOLICITOR GENERAL. It is, my lord.

LORD CHIEF BARON. That is the very last page of everything the attorney general said.

MR. SOLICITOR GENERAL. That is so, my lord.

LORD CHIEF BARON. I should have expected that if it was meant to assist the judge and the jury, it would have been the earliest thing, not the last.

MR. BARON BRAMWELL. What is the proposition laid down there?

MR. SOLICITOR GENERAL. It is this, my lords: "I ask you to give your conclusion in this case on the evidence; and I will state at once what I intended to have stated a little earlier, that, so far, I agree with my learned friend that the 'intent' must be an intent of one or more, having, at the time, the means and opportunity of forwarding and furthering such intent by acts. I agree that anything else called an intent, or that which would be called an intent in the mind of any person not of this description, must be treated properly as a mere wish, imagination, or desire. By 'intent,' undoubtedly the act means practical intent. But here you have various persons apparently with the power of influencing the destination of this ship." That appears to me, my lord, to be very clearly stated.

LORD CHIEF BARON. That is not what I complain of; if "intent" were the only word used in the act, it would be very well to say that there he explains intent. But what I complain of is that there is no distinct proposition of law which says this act is directed against so and so; if, therefore, the vessel is found under such and such circumstances with such an intent, then the verdict ought to be for the Crown and against the defendant. No doubt there are scraps here and there, such as that explaining the word "intent" here, for instance; but there is no proposition of law distinctly laid down. I cannot do better than call your attention for a moment to the exception; I happen now to have it before me; I had not got it on the former occasion. These are the exceptions, and you will see from them the view which the late learned attorney general took of my summing up. I am going to read to you the expanded exceptions which were sent to me a fortnight or three weeks after the trial.

MR. SOLICITOR GENERAL. I believe, my lord, that is not in the book.

LORD CHIEF BARON. No; I will tell you what they were. First, "That if the vessel was in course of building, in execution of a contract with or order from the Confederate States, or their agents at Liverpool, for the purpose of being employed by the Confederate States to commit hostilities against the United States, the statute was not violated." There is no pretence for saying that I ever laid that down. I am sure that none of my learned brothers can imagine that I ever laid that down in any part of my summing up. The second is this: That, "if the vessel was not intended to be equipped, furnished, or fitted with a warlike armament within the realm, the statute was not violated." I have never used the words "warlike armament" at all.

MR. SOLICITOR GENERAL. Not exactly that expression, my lord.

LORD CHIEF BARON. I say that there is nothing in the summing up that will warrant that. Then it says, thirdly, "That it is immaterial that the persons engaged in executing such contract or order knew that the vessel was to be employed by the Confederate States against the United States." I took that matter for granted; but I never said it was wholly immaterial. Lastly, That "in the seventh section of the act, the words equip, furnish, fit out, and arm, all mean the same thing." My summing up does not contain that. On the contrary, I referred to the case in the 6th Peters where I told the jury that the American jury found that the vessel was fitted out, though she was not armed, and that I approved of that, and left that as one of the matters that I summed up to them. And if this had been even hinted at—for at the trial this was not even hinted at in the remotest degree; I have the original paper handed to me at the time of the trial, which contains nothing about that exception, and that induced me to believe that the attorney general agreed with me, that, substantially, the four words did mean the same thing; I say, if that had been mentioned at the time of the trial, before the jury were dismissed, I should have said at once and instantly, Gentlemen of the jury, I expressed my opinion upon the meaning of these words, as I think I was justified in doing; but I never meant to lay it down as a matter of law; on the contrary, I left the case to you in a manner that excluded my so laying it down.

MR. SOLICITOR GENERAL. On the subject of the meaning of "equipment," and so on, the late learned attorney general directly joined issue with your lordship; and when your lordship said that you thought that equipping, furnishing, fitting out, and arming meant the same thing, he said "No, they did not."

LORD CHIEF BARON. At what page is that?

MR. SOLICITOR GENERAL. I think your lordships will find that, substantially, that is so. I had not the advantage of being present at the trial. I am referring to the

* See page 196.

notes; it is at page 199* of the larger book. You will see the learned attorney general draws attention to the fact that the words "equipped," "furnished," "fitted out," and "armed," are used not conjunctively but alternately, as it is called here. It begins at the very top of page 199. "The next contention of my learned friend was this, that to bring the case within the statute the vessel described in the seventh section must be a fully armed vessel issuing out of a port. Now, I cannot, of course, agree to that argument, or adopt that view of the section of the statute, because it is upon the surface of the statement in the first sentence which I addressed to the jury that this was not an armed vessel. The whole history of the matter is now before the jury. Of course, there was never any idea of suggesting that the vessel was armed. I will come hereafter to the arms that were probably intended to be put on board her by and by; but at the time of the seizure the vessel was in the state which I described, built for warlike purposes, and for those only, but not having received any armament on board. Now, addressing myself to this point, I have no doubt your lordship has observed that those various words (and they are numerous) which are used in the statute, such as 'equipped,' 'furnished,' 'fitted out,' 'armed,' and so on, are used not conjunctively but alternately." That is expressly put to your lordship. "LORD CHIEF BARON. They are used conjunctively in the preamble and disjunctively in the enacting clauses. The ATTORNEY GENERAL. Yes, my lord, and I shall show your lordship good authority that the true construction, as I understand it, whatever may be the language of the preamble, is disjunctive. It is used disjunctively." Now there could not be a more clear statement of a proposition of law than that. I am dealing with your lordship's remark that there was not a single clear proposition of law stated.

LORD CHIEF BARON. I said a clear proposition of law, laying down the rule which was to govern the case. If you think that that is met by pointing out a few words in one address, and some others in another, dealing with the equipment at the beginning and the intent at the end, and other things in the middle, I do not.

Mr. SOLICITOR GENERAL. I do not mean to say that there was so clear and complete an exposition of the statute as we have heard from the present attorney general.

LORD CHIEF BARON. The late attorney general did not say what "equip" meant, as distinguished from "fit out and arm."

Mr. BARON BRAMWELL. The observations of the late attorney general are very distinct in a sense; they are of a negative character. He says, It is not right to take it like this and I do not agree to this; but you do not find him saying anything positive.

Mr. SOLICITOR GENERAL. He hands up the case in the 6th Peters.

Mr. BARON FIGOTT. I understand my lord to say that he wanted him to point out, I do or I do not complain of the building the whole hull of the vessel, but something more is done; I do complain of the way in which the bulwarks are fitted; I do complain of the stanchions being there. That is what my lord says he ought to have laid down fully and clearly.

Mr. ATTORNEY GENERAL. I think I have found a passage, if your lordship will look at it, at the top of page 210.†

Mr. SOLICITOR GENERAL. On page 209 the attorney general discusses the act at some length; he reads the provisions of the foreign enlistment act, and then he quotes one or two cases. He quotes the United States against Guinet, 2d Dallas Reports, page 321, to show "That the converting a ship from her original destination with intent to commit hostilities, or, in other words, converting a merchant ship into a vessel of war, must be deemed an original outfit, for the act would otherwise become nugatory and inoperative. It is the conversion from her peaceable use to the warlike purpose that constitutes the offense. Then it appears that the vessel to which that case referred never actually proceeded on a cruise, and yet Guinet was convicted. Whereas he argues: 'In the case at bar, the Bolivar, having actually performed her cruise and made captures of vessels and property of nations with whom the United States were at peace, no room is left for doubting the object of her outfit in the port of Baltimore.' But of course it was necessary that the act should be completed within the territories of the United States. And it was, therefore, held that under that portion of the statute in which the word 'or,' and not the word 'and,' is used, and in that respect exactly the same as the general structure of our seventh section, upon the charge of being concerned—which is one of the charges in this information—in the fitting out, such charge is established by showing the intent, and a partial construction only, and not a complete construction or arming of the vessel. That applies to one of the objections taken by my learned friend, Sir Hugh Cairns, in this case, that the vessel is not a complete vessel, and to his argument, that in order that it should be brought within any one of the limits of this section it ought to be a completed vessel. To which, as I understand his argument, there should be superadded some equipment, or fitting, or arming, which he contended besides was indispensable to make the offense in any sense a complete offense. Gentlemen, I think I have now come to the last of the legal discussions invited and raised by my learned friend, and upon this authority I would submit to you, that the authority also agrees with the reasonable construction. Two points are established;

first, that arming is not necessary in order to constitute one of the violations of the statute, namely, the being concerned in, or probably endeavoring, but at all events being concerned in the equipping, furnishing, or fitting out."

MR. BARON BRAMWELL. That is a negative.

MR. SOLICITOR GENERAL. "And the next, that it is not in any view of the section necessary that the vessel with reference to which the forfeiture is sought to be affirmed should, at the time of seizure, be a completed vessel, and have then superadded some armament or fitting of war."

MR. BARON BRAMWELL. I noticed that passage before. You see there are two negatives stated there, but nowhere the proposition which we have heard from the learned attorney general in the course of this argument, which says that any equipping will do, however innocent in character, if it were done with the intent.

MR. SOLICITOR GENERAL. The attorney general proceeds to state the evidence, and what is affirmative in his speech is, I think, to be found in his comments upon the evidence.

[The court adjourned for a short time.]

MR. SOLICITOR GENERAL. My lords, upon the subject to which your lordship referred, I may, perhaps, mention that I find that the late attorney general called the attention of his lordship very pointedly to the case of "*The United States vs. Quincy*," and the passages at page 204* of the report which I have here of the attorney general's speech—

LORD CHIEF BARON. What is the object of what you are referring to? Is it to point out some proposition of law distinctly laid down?

MR. SOLICITOR GENERAL. Yes, my lord.

LORD CHIEF BARON. Really I think we have had almost enough upon that subject.

MR. SOLICITOR GENERAL. Very well, my lord, I should not have referred to it if your lordship had not done so. I did not propose to trouble the court with any portions of the late attorney general's statement; but, as your lordship stated that there were no distinct propositions of law laid down by him, I was going to say that I think I could mention some.

LORD CHIEF BARON. It is an exceedingly painful matter to allude to the late attorney general in this way.

MR. SOLICITOR GENERAL. No doubt it is, my lord.

LORD CHIEF BARON. It is impossible not to feel the condition in which the late attorney general is now placed, and it is impossible not to entertain a respect for him, as a most honorable and learned, and particularly, I think, an independent-minded man, who would always endeavor to do his duty. But, at the same time, if one is called upon to remark as to the mode in which the matter was presented to the court and to the jury, one may say that one should have expected an explanation about the statute to come in the first instance from him; one might have expected him to say, here is the law; it has never been put in force before. He did tell the jury that; he said, I shall prove these facts. He did not say in what manner those facts would apply to that statute, nor did he give anything like an explanation of it which would enlighten the minds of the jury or enlighten the court. I do not profess to say that I or any judge would at once pretend to expound with perfect certainty an act of Parliament to which our attention was then for the first time called, and which had slept in the statute book for forty-four years.

MR. BARON BRAMWELL. And which has required five days for its perfect elucidation.

LORD CHIEF BARON. And which has been the subject now of five days' argument. I say, I should have expected that in the outset we should have been told what the Crown complained of as distinctly as this; the proposition which we propose to derive from the act is in point of law so and so. But not only did I not get that, but I did not even get any assistance; and when I proposed to go into it and see whether we could not, by paring down the proposition first on one side and then on the other, get to some point, I had not only no assistance, but I had a steady refusal to answer any question, or to give me any information beyond this, we are entitled to the verdict.

MR. SOLICITOR GENERAL. This is, my lord, as you have said, a painful subject which I did not intend to discuss if it had not been referred to by your lordship. No doubt there was not the complete and full explanation of the statute which we have heard from the present attorney general. At the same time I only ventured, and I will not say more about it, in answer to a remark from your lordship, to show that in many passages of his address the late learned attorney general had expressed some very plain propositions of law. But indeed I will not dwell upon the subject. I was not at the trial, and therefore I am the less able to judge of the manner in which the case went to the jury.

As your lordship has referred to this matter, it may be convenient, as connected with it, that I should refer at once to the summing up, and I will proceed to do so. I was about to say a little while ago, with respect to the summing up, that we have, I think, one very clear and definite matter about which there is no mistake. It was ruled, and that ruling has been supported by my learned friends here, that the equipment must

* See page 114.

be of a warlike character, and I wish that there should be no misunderstanding about that; not of a warlike character as explained by intention, but of a warlike character to some extent *per se*, and on the face of it. I wish to have that clearly understood, because if it is to be contended that any equipment *ancipitis usus* is to be shown to be of a warlike character solely by intention, that would be another case altogether. That is what we contend for, as I have before observed. But it is contended, and that really is the main question, that the equipment must be, to a certain extent, *per se* of a warlike character. It is not enough that it shall be shown that the equipment was applicable to warlike purposes; it is not enough to show that the equipment was suitable, but the equipment must be shown to be peculiarly suitable; and must be made to appear to be so on the face of it. I have already said as much as I need say upon that subject, and I will not repeat my remarks. If my learned friend, the attorney general, and myself are right upon this point in our view of the law, then there was a misdirection; about that there can be no question. I do not desire to subject the ruling of my lord to any minute or verbal criticism, and I shall, of course, gladly accept in a moment any explanation from the Lord Chief Baron with regard to the meaning of his words. At the same time I think it my duty to call attention to this summing up, which I cannot help thinking had the effect of not directing the attention of the jury to the true construction of the statute, and may have tended to produce an improper verdict.

Now, my lords, I apprehend that upon the construction of a statute of this importance it would be the duty of a judge to give the jury some direction, and that the mere leaving of the words of the statute to the jury without any direction would be extremely unsatisfactory. My lords, there is a case bearing upon this matter, namely, "*Elliot vs. The South Devon Railway Company*," reported in the second volume of the *Exchequer Reports* at page 725, and in that case, which was tried before Mr. Justice Wightman, the court directed a new trial upon the ground that the judge did not explain to the jury the meaning of a term used in the act of Parliament, but left it for them to put their own construction upon it.

LORD CHIEF BARON. What was the word?

MR. SOLICITOR GENERAL. The word was "town," which is a phrase, I should think, likely to be as well understood by a jury as "the equipping of a vessel." The case is fairly stated in the marginal note. "It was the trial of an issue whether a railway was passing through a 'town,' within the meaning of the railways clauses consolidation act, (8 and 9 Vict., chap. 20, sec. 11.) The judge merely told the jury that the word 'town' was to be understood in its ordinary and popular sense. Held, a misdirection, inasmuch as the judge ought to have given such a definition of the word 'town' as would have enabled the jury to decide the issue. 'Town' in that act means a collection of inhabited houses so near to each other that they may reasonably be said to be continuous, and the term will include a space of open ground surrounded by continuous houses."

MR. BARON BRAMWELL. Why did not somebody say, that there was no explanation given of what a "collection" meant, and what a "house" meant, and what "continuous" meant, and so on; they are all English words.

MR. SOLICITOR GENERAL. This was a decision of this court, the Court of Exchequer.

MR. BARON BRAMWELL. I am aware of that, and if I may venture to say so, it is not entitled to any more respect on that account; still, of course, it is entitled to all respect; but I have often thought, what is a judge to do in such a case? Here is a plain popular English word without any peculiar technical signification. You are expected to explain it to the jury. You must explain it by other popular plain English words. Then must you not explain them? So that I do not know where you are to stop.

MR. SOLICITOR GENERAL. The Court of Exchequer, of which Mr. Baron Parke was a member at that time, held that a new trial must be granted because Mr. Justice Wightman did not explain in what sense the legislature used the word "town." That was the case: "The learned judge was certainly not bound (I am reading what Mr. Baron Parke says) to define the meaning of 'town,' so as to embrace every possible case, yet he ought to have given a definition sufficient to enable the jury to decide the present question, which is, whether the railway can be considered as passing through a 'town' within the meaning of the act of Parliament." That is the substance of the decision of the Court of Exchequer, and a new trial was accordingly granted. Now, if it were necessary or desirable to explain what was meant by "town" in the act of the 8th and 9th Victoria, I cannot help thinking that it is quite as necessary to explain what was meant by the word "equipment" in the foreign enlistment act, which is at least as important a statute and at least as ambiguous. I have only to say upon that point, that according to the decision of this court, if the learned lord chief baron had merely left to the jury, in the words of this act, was there an equipping, and so on, that would not have been considered satisfactory.

But, my lords, it appears to me that there were certainly expressions independent of the point which I have put, (upon which there would be a clear misdirection if we are right,) tending to mislead the jury. It is not at all unnatural, and not at all

improbable, considering that the act had not been construed in this country before, and considering, as your lordship has observed, the number of days which have been required to elucidate its meaning now—I say it is not unlikely that the learned judge might, upon the first trial of the case, not have quite understood its meaning. It is no doubt an act of peculiar difficulty to construe. It appears to me, my lords, that the summing up of the learned judge had a tendency to induce the jury to suppose—this I take not from a minute criticism of a few passages, but from the whole—that the only question for them was the intent of the builder or the equipper. Nothing is hinted in the course of the charge as to the intent of any foreign belligerent, or the agent of any foreign belligerent, and I cannot help thinking that although his lordship may not have intended to lay down any wrong law upon this point, still that it may have been much misapprehended by the jury. Supposing that it had not been shown that Messrs. Fawcett, Preston and Company, or Messrs. Miller and Company, intended this vessel for foreign service; supposing there had been no evidence of that at all, still if she was ordered by Captain Bulloch, or any of the confederate agents for the confederate service, that was enough to forfeit the vessel. But that view was not presented to the jury at all. When we come to the latter part of the summing up, I think you will see that it would point the attention of the jury only to the intention of the defendant, that is of the equipper. His lordship says: “Gentlemen, if you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. But if you think the object really was to build a ship, in obedience to an order, and in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the foreign enlistment act has not been in any degree broken.” These words “in compliance with a contract,” and so on, apply to the builder, but the attention of the jury is not directed to this, that, independently of the builder the vessel may be forfeited on account of an order given on behalf of a foreign government.

I think if we go back to a former part of the summing up, it will be more clear that the intention of the jury was not directed to this most important distinction between the fitting out upon speculation or in pursuance of an order, which really is the point of the case, as I have endeavored to show before; for the lord chief baron says that the attorney general did not answer the question which he had put to him, which was this: “Do you mean to say that a man cannot make a vessel intending to sell it to either of the belligerent powers that requires to have it?” Then your lordship says, “You are lawyers enough to answer it yourselves. I think that answer ought to be ‘Yes: a man may make a vessel.’ Nay more, according to the authority I have just read,” (that was the *Santissima Trinidad*, to which I have referred,) “according to the authority I have just read, he may make a vessel and arm it, and then offer it for sale. So Story lays down.” That is true; “But I meant, gentlemen, as I said then, if I had got an affirmative answer to that question, to put another. If any man may build a vessel for the purpose of offering it to either of the belligerent powers who is minded to have it, may he not execute an order for it? Because it seems to me to follow, as a matter of course, if I may make a vessel and then say to the United States, ‘I have got a capital vessel; it can easily be turned into a ship of war; of course I have not made it a ship of war at the present; will you buy it?’ If that is perfectly lawful, surely it is lawful for the United States to say, ‘Make us a vessel of such and such description, and when you have made it send it to us.’” I cannot help thinking that this, following immediately after the case of the *Santissima Trinidad*, may have led the jury, although the learned lord chief baron did not intend it, to suppose that if in the case of the *Santissima Trinidad*, the vessel had been fitted out and armed in pursuance of a contract with the belligerent, instead of being so fitted out merely on speculation with the hope of being sold to him, the decision would have been the same—whereas it would have been the reverse. I cannot help thinking that the jury would be liable to receive that impression.

LORD CHIEF BARON. Do you think that where by possibility a jury may have misunderstood the words of a learned judge, that is a case for a new trial?

MR. SOLICITOR GENERAL. Not the mere possibility, my lord, but the probability.

LORD CHIEF BARON. Who is to judge of that?

MR. SOLICITOR GENERAL. The court, of course, my lord. I made my observations subject to the opinion of the court.

LORD CHIEF BARON. All you said amounted to this, that the jury may have so misunderstood it.

MR. SOLICITOR GENERAL. I should venture to put it to the court that there was a tendency to mislead the jury in those observations. I cannot help thinking so. Then the lord chief baron refers to the argument of the late attorney general, a very cogent argument; and it would appear from that that the attorney general had addressed himself to this view of the question. His lordship says, “Now the learned counsel certainly addressed themselves very much to this view of the matter. It was said, But if you allow this you repeal the statute.” Well, my lords, that I should argue myself certainly, and that it appears that the then attorney general did argue. Then

the lord chief baron says, "Gentlemen, I think nothing of the kind. What that statute meant to provide for was, I own, I think by no means the protection of the belligerent powers. I do not think their protection entered into the heads of those who framed this statute." That is so far correct. There can be no doubt that we did not frame this statute for the immediate purpose of protecting belligerents, but to preserve our own neutrality. Otherwise they would have said, "You shall not sell gunpowder; you shall not sell guns. There are places that now and then explode in different parts of the kingdom, and which would have complained very heartily if they had said, You shall not sell gunpowder; you shall not sell arms. Why, all Birmingham would have been in arms. But the object of this statute was this: we will not have our ports in this country subject to possibly hostile movements; you shall not be fitting up at one dock a vessel equipped and ready, not being completely armed, but ready to go to sea, and at another dock close by be fitting up another vessel, and equipping it in the same way, which might come into hostile communication immediately, possibly before they left the port."

LORD CHIEF BARON. You have been in the habit of referring to the foreign enlistment act. With respect to the first part of it, I may say that I believe there are plenty of instances where, in a neutral state, some of the inhabitants have enlisted on one side in a war and some on the other, and have actually got into personal conflict.

MR. SOLICITOR GENERAL. I do not know of any case of that kind, my lord, but it may be so.

LORD CHIEF BARON. I think you will find, historically, that there are plenty of cases of that sort.

MR. SOLICITOR GENERAL. It may be so, my lord, but I apprehend that that would be an offense against the common law.

LORD CHIEF BARON. However ridiculous, trumpery, or contemptible an illustration may be, that has nothing to do with the construction of the act. If the act was intended to prevent the neutral ports from being the starting points of hostile movement, whether there was a subordinate motive, that there should not be the North and the South contending in our own ports, is quite unimportant. It does not abate in the slightest degree from the argument, though it may be very absurd to quote that as an example; at the same time I own I do not think it was quite so absurd as the learned attorney general seemed to think.

MR. SOLICITOR GENERAL. I am sure, my lord, I was far from taking this as more than an illustration. I know it was only an illustration, and your lordship was far from saying that that was the only mischief intended to be met by it.

LORD CHIEF BARON. That is an illustration of one of the mischiefs which might by possibility occur.

MR. SOLICITOR GENERAL. At the same time I cannot help thinking that it led to this view of the object of the act, "We will not have our ports subject to possibly hostile movements." But I contend that that was very much narrowing the construction of the act; that it was not passed to prevent any inconvenience which we might suffer from hostile movements in our ports.

LORD CHIEF BARON. No, not hostile movements in our ports; hostile movements from our ports.

MR. SOLICITOR GENERAL. In my copy, my lord, these are the words, "We will not have our ports in this country subject to possibly hostile movements," and then the kind of hostile movement is indicated by what follows, which shows that it was within the port.

LORD CHIEF BARON. No, no; really this is more like a critical reviewer going through the summing up, than anything else.

MR. SOLICITOR GENERAL. I do not really wish, my lord, to subject your lordship's summing up to any verbal criticism.

LORD CHIEF BARON. Mr. Solicitor General, I may appeal to you, whether you have ever heard, since you have been a member of the profession, a short-hand writer's note of a summing up treated in the manner in which this has been treated for three or four days.

MR. BARON BRAMWELL. This note is like an unpleasant portrait in which every little scratch on your face may be seen.

LORD CHIEF BARON. And even the unshaven corner of your chin.

MR. SOLICITOR GENERAL. It was first referred to, my lord, by my learned friends on the other side—they made the first use of it.

LORD CHIEF BARON. But I believe not in disparagement of it.

MR. SOLICITOR GENERAL. No, my lord.

MR. BARON BRAMWELL. I have often thought of the comparison between the two arts of photography and short-hand writing; both arts are wonderfully clever, but it would require the most perfect countenance, and a wonderful command of language, if the one or the other did not sometimes represent you as having done or said or looked something that you would rather not be thought to have done or said or looked.

MR. SOLICITOR GENERAL. No doubt, my lord, and although the sun is occasionally

unpleasantly accurate, still he is always accurate in one sense; but we know that the short-hand writer is liable to mistakes, and he makes them sometimes.

LORD CHIEF BARON. As I am the president of the Photographical Society, I am obliged to you for that distinction. Photography does not make mistakes; short-hand writers do.

MR. SOLICITOR GENERAL. Photography gives an unpleasant version, but not an absolutely untruthful one; yet it is unquestionable that in one sense it does misrepresent a man, for though literally rendering some things, it omits others; for example, color; thus often conveying a false impression; but the short-hand writer sometimes writes down what is not said, and sometimes leaves out what is said; his performance therefore scarcely resembles a photograph.

Now, my lords, I will pass from this subject; as your lordship tells me that that is not the meaning of the passage I will say no more upon it. I will only observe further that I cannot help thinking that the jury very possibly may have been under the same impression, which unquestionably was entertained both by the present and by the late attorney general, as to what your lordship said upon the subject of furnishing, equipping, fitting out, and arming all meaning the same thing, because I venture to remind your lordships of this, that in the course of the speech in reply of the late attorney general the Lord Chief Baron referred to Webster to confirm his view, and then the attorney general said, "That is not so," and handed up the case in Peters; then there followed a discussion.

LORD CHIEF BARON. Not quite so. There is no doubt that if you mean to say that I referred to Webster and he handed me up the case in Peters, it was so, but it was not thereupon.

MR. SOLICITOR GENERAL. Not immediately, my lord.

LORD CHIEF BARON. Nothing like it. He expressed no dissent whatever, but he did quote a case which was inconsistent with that, upon which I immediately adopted the case he cited.

MR. SOLICITOR GENERAL. I was going to observe, my lord, upon that. I must be forgiven for saying a word upon it. The attorney general handed up the case in the 6th Peters in the course of his address.

LORD CHIEF BARON. He did not hand it up.

MR. SOLICITOR GENERAL. I think he handed it up to your lordship.

LORD CHIEF BARON. No, you will find what passed stated at full length; that is a mistake; he did not hand it up to me.

MR. BARON BRAMWELL. I am sure that if it were of the least use, I would not ask you not to address this argument to us; but let me put this to you, have you not got enough for your purpose when it is agreed that if your construction of the statute is right, my lord, to put it in plain language, was wrong.

LORD CHIEF BARON. Yes, and that is so; if you have got that, what more do you want?

MR. SOLICITOR GENERAL. I was only going to say in addition to that, my lords—

MR. BARON BRAMWELL. There are two things, the fitting out and the intent. You see here you have only one of two things to establish—establish your proposition, and then you will be right, because it would be then evident that the direction was opposed to your view.

MR. SOLICITOR GENERAL. We believe ourselves to be right, but of course we are not infallible, and we may be wrong, and it is only upon that assumption that what I am now submitting would be relevant.

MR. BARON BRAMWELL. That is so; it may be that you are wrong in your construction of the statute, and that a warlike equipment is required.

MR. SOLICITOR GENERAL. But not an arming, and the jury may have understood that an arming was necessary.

MR. BARON PIGOTT. Then you go further and say, Still there may have been an endeavor or an attempt to arm, do you not?

MR. BARON BRAMWELL. That is another point; that would be a verdict against evidence upon that supposition.

MR. SOLICITOR GENERAL. There is no count for endeavoring to arm; arm is not mentioned at all.

MR. BARON PIGOTT. Endeavor to equip will answer the same purpose.

MR. SOLICITOR GENERAL. I was going to say that what was understood by both the attorney general and the solicitor general, and by the counsel for the Crown, may have been understood by the jury, and I think your lordships will see that it is not improbable that that may have been so, because after the lord chief baron had expressed an opinion that equipping and arming meant the same thing, the attorney general cited the case of "the United States against Quincy," and it was after that case had been cited that his lordship stated that still his opinion was—

LORD CHIEF BARON. What I stated, I stated as my opinion, but I told the jury expressly that I did not lay it down as law. You can take the conclusion from what I

stated to them, namely, that though it was quite right to find that the vessel was not all armed, yet if she was fitted, the verdict was to be for the Crown.

MR. SOLICITOR GENERAL. If your lordship told the jury expressly—

LORD CHIEF BARON. I did tell them expressly that if they should find that the ship was fitted, though she was not armed, the verdict must be for the Crown.

MR. BARON BRAMWELL. I think, Mr. Solicitor General, it is too clear to admit of a doubt that it was so.

MR. SOLICITOR GENERAL. Very well, my lord, it appeared to me that the jury were under the same impression that my learned friends were under, but if your lordship says that that was not so I will pass on at once.

LORD CHIEF BARON. As Mr. Fox said once of a speech, a speech is a thing to be spoken, not to be read, and it may in delivery be very good and perfectly fit for the purpose, and yet it may read very badly. Every speaker addresses himself to his audience, watching the effect which he has produced upon them, and so in summing up to the jury you see whether the jury understand you or not, and going along with you. If they do, you do not go on as if you were special pleading or drawing an indictment. You see that the jury understand what you mean and you do not say that which shall be *omni exceptione major*, when it comes to be put into writing and criticised as if it were a composition framed with some aim in view. You see whether the jury understand what you are about, and if you think you have made them understand it, taking it for granted that they are not taking an inattentive view of the subject, you pass on the moment that you imagine that you have got them to understand what you mean.

MR. SOLICITOR GENERAL. That is exactly the test which I wish to apply to the summing up. I do not wish to make any verbal criticism.

MR. BARON BRAMWELL. How could the jury misunderstand this: "Armed she certainly was not, but was there an intention that she should be furnished?"

MR. SOLICITOR GENERAL. You see, my lord, that if the judge tells the jury, as his lordship did two or three times, that "equipping" and "arming" mean the same thing, and then that they may have some different signification, without explaining what, the jury do not know what the judge means.

LORD CHIEF BARON. They would know perfectly if they had the least sense in the world. Unless they have an intention to misunderstand it, I do not see how they could doubt about it.

MR. SOLICITOR GENERAL. Certainly, my lord, there was no intention to misunderstand your lordship on the part either of the late or the present attorney general, yet they did misunderstand it.

MR. BARON BRAMWELL. No; not quite so; I understand that what the late attorney general and the present attorney general understood was this, that my lord had said that the equipping, furnishing, and fitting out must be of a warlike character, and therefore in a certain sense must be in the nature of an armament.

MR. ATTORNEY GENERAL. That is what we thought, my lord.

MR. BARON BRAMWELL. Exactly; my lord says now that he did say so, but the learned solicitor general is trying to make it out that there was a misdirection beyond that, to the extent of saying that there could be no fitting out, furnishing, or equipping unless the vessel was armed.

MR. SOLICITOR GENERAL. I will pass from that, my lords. The then solicitor general seems to have understood it so at the trial, for he says: Your lordship has already said that equipping and arming are the same thing.

LORD CHIEF BARON. I have already said what it was that the attorney general complained of at the trial, and he did not object at the trial to the supposed meaning of those words being the same; it was an afterthought.

MR. SOLICITOR GENERAL. Of course, my lord, if your lordship tells me so I must so take it.

LORD CHIEF BARON. There is no doubt about it. I have read the objection made at the trial, and I have read the objection made three months afterward. If that had been made at the trial I would have corrected it almost in a syllable. I stated my opinion; I did not mean to lay it down as the law.

MR. ATTORNEY GENERAL. Perhaps your lordships will permit me to say, with regard to that, that what your lordship says is perfectly accurate. What was tendered at the trial with regard to warlike armament was meant to express the sense in which we understood your lordship to explain the words, and then when we found that your lordship had not used the expression it was thought well to add some other words which your lordship was considered to have used.

LORD CHIEF BARON. If the statement of all the words meaning the same thing had been dissented from in the way it appears now to have been done, I am surprised that it was not made the ground of an objection at the trial.

MR. ATTORNEY GENERAL. We thought it was expressed in the word "armament," my lord.

MR. SOLICITOR GENERAL. Not having been at the trial, it is not for me to say anything further upon the matter.

LORD CHIEF BARON. That was why I would not sign the bill of exceptions, because they put in the expression "warlike armament," which I did not mean to use at all.

Mr. SOLICITOR GENERAL. They understood your lordship to have meant it; they certainly so understood it.

LORD CHIEF BARON. What I said to the late attorney general was this: "Put your objection in the language that occurred at the trial, and do not put into my mouth language which I never used."

Mr. SOLICITOR GENERAL. I am sure that your lordship will agree with me that whatever the late attorney general imputed to your lordship was what he understood.

LORD CHIEF BARON. Most certainly.

Mr. SOLICITOR GENERAL. But I accept your lordship's statement.

LORD CHIEF BARON. I am sure that I wish to express myself with the highest respect, and the most perfect confidence in his honorable independence of character and integrity.

Mr. SOLICITOR GENERAL. Upon that point I accept your lordship's statement that you were misunderstood by the late attorney general and by my learned colleague, who is now present, and I will pass from that subject. I have submitted that the equipping of a vessel upon a mere commercial speculation, as distinguished from doing it under an order, does not appear to me to have been distinguished in this summing up, which would be an additional objection to it, but having made that observation I will pass on. I have just one word more to say before I leave this subject. Assuming for a moment it to be the correct view of the statute that there must be an equipment of a warlike character in the sense which has been explained, still I apprehend that there was evidence for the jury of such an equipment, and that being so, it should have been put to the jury to say whether that equipment was or was not of a warlike character. I mean independently of any intention to further equip—there was evidence of there being an equipment of a warlike character in this case, and that question was not submitted to the jury, but should have been.

Now, my lords, with respect to the evidence, I do not know whether the court require to be satisfied that a new trial can be granted upon the ground of the verdict being against evidence in this case.

LORD CHIEF BARON. I think that the rule is very clearly established that where the question of supposed miscarriage turns entirely upon matter of fact, there cannot be a new trial in an information involving a forfeiture, a *qui tam* action, and a *fortiori* a mere common indictment. But if the judge has misdirected the jury in point of law, then there may be a new trial. So also if the court can be satisfied from the circumstances before them that the jury must have returned their verdict not under a misapprehension of fact, but under a complete misapprehension of law, then there may be a new trial. That I take to be the rule as established by the authorities, comparing those which were presented to us by Mr. Mellish and by the attorney general in reply.

Mr. SOLICITOR GENERAL. My lord, I quite subscribe to the accuracy of that statement with respect to informations *in personam*; but I am inclined to think (and I have some authority for so doing) that with respect to informations *in rem* the rule is not so curtailed; and there may be some reason for a difference, inasmuch as informations *in personam* are in the nature of criminal or penal proceedings, but in this case it is merely a dispute as to property. The Crown says, "This vessel is mine."

LORD CHIEF BARON. Do not leave out that the Crown says, "This is mine because somebody has committed a crime, the consequence of which is that this vessel is forfeited."

Mr. SOLICITOR GENERAL. That is so, no doubt, my lord. I ought to have qualified my statement in that way: "This is mine because somebody has committed a misdemeanor." Then anybody may come in—not necessarily the person who is charged with the misdemeanor, but anybody whose attorney will swear that he believes him to be the owner, nothing more—and he may fight with the Crown, I was going to say, over the dead body of this vessel; he may contest with the Crown the right to this vessel. Now that is in many respects, as it appears to me, a different proceeding from an information *in personam*, and accordingly I find it laid down with respect to informations *in rem*, all the other cases being really informations *in personam*, that the rule generally is that a new trial may be granted without limitation. That is said in Manning's Exchequer Practice, under the head of "information *in rem*—new trial." "A new trial will be granted where the justice of the case requires it, although the verdict be for the defendant." That is laid down generally; it is in the first volume of Manning's Exchequer Practice, page 180, and Manning refers to a case in Bunbury, page 253.

LORD CHIEF BARON. Bunbury, I think, is a reporter of the slightest authority.

Mr. SOLICITOR GENERAL. He is not a reporter of high authority, no doubt; but this case was quoted by Mr. Mellish, and the only observation which I have to make upon it is, that although it is stated to be a *qui tam* proceeding, Robinson against Lequeux, still upon examination it turns out to be an information *in rem* and not *in personam*.

LORD CHIEF BARON. That confirms the general opinion as to the slender authority of Bunbury.

Mr. SOLICITOR GENERAL. Not quite so, because I rather think that in the statute of Charles, upon which that proceeding is founded, the informer is entitled to a portion of the property seized. This was an "information of seizure," it is called, "of Jeunit's bark, on the statute 14th of Charles the Second, chapter 11, section 12." I have looked at that section, and I find that it prescribes no penalties, but only that under certain circumstances goods shall be seized and forfeited. So that this was an information *in rem*, and the report says generally, "There was a verdict for the defendant, and now a motion was made for a new trial; but *per totam curiam* it was denied." Then it is said, "Nota.—It seemed to be admitted, in a case of this nature, a new trial might be granted if the facts would have admitted of it," and so on. That really is the whole amount of authority which I thought it necessary to bring before your lordships. I find it stated generally in Manning's Exchequer Practice (and this case is referred to) that in the case of an information *in rem* a new trial will be granted where the verdict is against evidence. But in respect of informations *in personam* the rule has been qualified, as the lord chief baron has very accurately laid down. My lords, I do not know that your lordships would be inclined to narrow the power of the court to do what they think justice. I should be disposed to think that the court would not necessarily consider themselves bound to apply a rule which relates to an information *in personam* to another proceeding, which to some extent, at all events, differs from it. That is all I have to say upon that point.

My lords, I now come to the evidence. I submit to your lordships that if we are right in our construction of the statute, the verdict is manifestly against evidence. But even if we are wrong, and if there must be not indeed an "arming" but an "equipment" of a warlike character, still I submit to your lordships, and with some confidence, that there was evidence which, if unanswered, made a verdict for the Crown right and proper, so that any other verdict would be unsatisfactory. Now, let me call your lordships' attention to what the evidence with respect to this vessel was as to her equipment. I will summarize it. I will not go through all the detail which has been gone through before. In the first place, it was shown that she was built as a gunboat; that was shown by an admission from one of the parties concerned; that she was built as a gunboat, and for the Confederate States. Then it appeared that a good deal of her build and of her equipment was, as it seems to me, of a warlike character, in the sense for which my learned friends have contended. She was built so that she could not carry any cargo; she was built so that she could carry a large crew; and she was furnished, to some extent, for the purpose of carrying a large crew, which could not by any possibility be a mercantile crew. Although she was a small boat and could carry no cargo, there was a cooking apparatus, among other things, for one hundred and fifty or two hundred men. Then, further, her decks were made of pitched pine, which according to the evidence of one of the witnesses, Black, is not used for the decks of merchant vessels.

Mr. BARON PIGOTT. Was the cooking apparatus in the vessel?

Mr. SOLICITOR GENERAL. It was in the vessel, as I understand. I shall be corrected if I am wrong.

Mr. BARON PIGOTT. Whose is the evidence of that?

Mr. SOLICITOR GENERAL. I can refer your lordship to it.

Mr. BARON BRAMWELL. It is at page 103.*

Mr. SOLICITOR GENERAL. I have it my lord. "Let me ask you, did you observe a cooking apparatus?—Yes, there was a cooking apparatus in the fore-castle, sufficient for one hundred and fifty or two hundred people. Was that the kind of cooking apparatus which is usual on board merchant vessels?—Only on board of passenger vessels; merchant vessels which are passenger vessels have as large and larger cooking apparatus, or ships which go on long voyages have as large. But a common merchantman would not have so large an apparatus?—No, not a small vessel like that." If she was a passenger vessel, considering the intention, about which there is no doubt, she must have been intended for a transport, because she was built for the Confederate States, according to their own admissions.

Then the decks are of pitched pine. Now, I observe that in page 62† Black is asked this question:—"What are the upper decks made of?—Pitched pine. Have you ever seen pitched pine used for the decks of any vessel except vessels of war?—No." Then according to the evidence of that witness there is a description of deck which is used only in vessels of war.

Then, my lords, it is shown that there is a scuttle or hatchway so small as to be totally unfit for merchandise or for the stowing or the unstowing of merchandise, but just large enough for a man to go up and down. Then there is accommodation for a large number of seamen. Then there are bulwarks unusually thick and unusually low. My learned friend on cross-examination asked one of the witnesses, Mr. Green, whether these bulwarks might not be constructed for strength; he said, No, that they would only weaken the vessel. Their weight would, if she were intended for any other purposes than war, be a disadvantage, but those bulwarks were applicable to the resistance

of shot, and it was not suggested that they were applicable to any other possible purpose. Then they were made low. Why? In order that a pivot gun might work over them. At all events, that was for the jury. There was not distinct evidence of their being made low for that purpose, but that at all events was a question for the jury, whether they were not made low for that purpose. But at all events for their thickness no reason could possibly be suggested except the resisting shot.

Then the rudder was larger and stronger than would be used in any merchant vessel. Then the forecastle was not fitted as a merchant vessel's forecastle—that is stated in the evidence of Mr. Green. Your lordships will find that distinctly; it is at page 103,* “Did you observe the forecastle?—I observed that it was not fitted as a merchant's forecastle, but as I have seen yachts and small vessels of war.”

Then there stanchions for hammocks and hammock nettings, as I understand it (I shall be corrected if I am wrong) to be affixed to the bulwarks inside. Why? For the purpose of stopping shot. I do not think that any human being can doubt that that was the object.

Mr. BARON CHANNELL. One object.

Mr. SOLICITOR GENERAL. One object.

Mr. BARON CHANNELL. There are several others.

Mr. SOLICITOR GENERAL. I believe the effect of the evidence to be this. I will endeavor to cite it fairly. Such apparatus is never used, or scarcely ever used, in merchant vessels; it is sometimes used in yachts. I will come to that part of the evidence. At page 106,† in the evidence of Mr. Green, who has been speaking about this matter, the Queen's advocate says, “I did not understand what you said about the hammock racks as to their resisting shot.” Mr. Green says, “The original fixing of hammocks on the hammock racks was to resist shot from musketry, which they will do.” That is to say, when they were originally introduced; that is what he means; and it is suggested that sometimes they were placed on board of yachts for the purpose of bringing the hammocks on deck, and airing them; but still nobody who applied his mind to the matter at all could doubt that hammocks were in this vessel for the purpose of making the bulwarks still stronger than before, and protecting the crew from shot. The crew, no doubt, would kneel down and fire their rifles over the bulwarks, and the pivot gun would work over the bulwarks. I do not think that any human being could doubt that intention.

Now it appears to me that every one of these equipments which I have spoken of was an equipment which you can scarcely call *ancipitis usus*, but was an equipment peculiarly adapted for war, showing on the face of it that it was intended for war; and it is difficult to suggest what other equipments the vessel would have had to be complete, except a plate for the guns and the guns; that was all. Of course it may be assumed that the vessel, before she went out would have had coals, and would have been in a state to take the sea. Nobody can doubt that at all.

LORD CHIEF BARON. Why should you go away from the evidence of Captain Inglefield? I observe what appears to be a remarkable omission of a few words in the printed copy of the short-hand writer's note. It is at page 58‡. The words there are, “Of what timber is she built?—Principally of teak; her upper works are of other material; the kind of wood I cannot exactly say; but I should call her a strongly built vessel; certainly not intended for mercantile purposes, but she might be used and is easily convertible into a man-of-war.” My note is this, “She is principally teak; strongly built; certainly not intended for merchandise; might be used as a yacht.”

Mr. ATTORNEY GENERAL. Your lordship's remark is quite just; the words “as a yacht” do not appear here.

The QUEEN'S ADVOCATE. If your lordship looks at the top of page 59§ you will see that it is almost implied that that must have been said. Your lordship is there reported to have used the words, “He said that she might be used as a yacht.”

Mr. SOLICITOR GENERAL. So that we may take it that Captain Inglefield entirely negatives the notion of being adapted in any way for a mercantile purpose; but he says that she might be used as a yacht. That would narrow her use very much, but still, I have been referring to that part of her structure, and her furnishing and fittings, which appeared to me to be scarcely *ancipitis usus*, but that their appearance would induce almost anybody to suppose that they were more probably, at all events, intended for war than for peace. But then there were other equipments which, according to the view which we take, it is not immaterial to mention. I may state that there was a screw propeller by way of motive power which would be equivalent to the sails of a sailing ship, and there were the masts and the ropes, and all the tackle, and so on.

My lords, that is the substance of the evidence. I do not wish to fatigue your lordships by going more into detail. Now I submit that if that evidence was unanswered, coupled with very clear evidence of intention, about which I should think there would be no dispute—that was a case in which the jury ought to have found a verdict for the Crown, assuming always that they believed the evidence of the witnesses; and I think your lordships would say that, in the absence of witnesses called on the other side,

* See page 58. † See page 60. ‡ See page 33.

there was no reason whatever for the jury not believing these witnesses. This part of the case depends chiefly on the evidence of Mr. Green, a highly respectable man, Captain Inglefield, and Mr. Black, as to the equipment and so on. As to the intent, that was proved by Mr. Da Costa, who deposed to what was said by Mr. Miller, and beyond all doubt Mr. Miller could have been called.

LORD CHIEF BARON. There is some doubt whether that evidence was properly received.

MR. SOLICITOR GENERAL. It is upon the notes, and we must deal with it as a part of the evidence.

LORD CHIEF BARON. I know that. I said that I thought I should imperil the case of the Crown by refusing to admit it.

MR. SOLICITOR GENERAL. My lord, I do not desire now to embark in that argument, it is not necessary for my purpose. If it were I should maintain that your lordship was perfectly right in receiving that evidence. However, I will not discuss that question.

My lords, I therefore submit that first, according to our view, assuming that equipments *ancipitis usus* may be explained by the intent, there was manifestly an equipment, and manifestly an equipment with intent that this vessel should be used in the service of the Confederate States; and that the verdict in that view, at all events, is directly contrary to the evidence. Even assuming that not to be so, I apprehend that there was evidence of equipments of a warlike character in the sense which has been defined, and that the jury ought to have found for the Crown in the absence of any evidence to contradict or explain it. Upon the whole, therefore, I submit to your lordships that this case has not been satisfactorily tried. It is no doubt the first occasion upon which a statute of very great importance and of very great difficulty in its construction has been presented to a jury, and it is not unlikely that there should have been some misapprehension and some miscarriage. For these reasons I submit to your lordships that it concerns not only the Crown but the whole country, whose interests are identical with those of the Crown, that a new trial should be granted, whereby the law may be settled and vindicated.

LORD CHIEF BARON, (to the Queen's advocate.) We rise at three o'clock on Saturday, but we will sit till four o'clock if there is any probability that the case will be finished by that time.

THE QUEEN'S ADVOCATE. I am afraid, my lord, that that would not be possible. [Their lordships consulted together.]

LORD CHIEF BARON. We will go on with this case on Monday at 11 o'clock.

SIXTH DAY, *Monday, November 23, 1863.*

THE QUEEN'S ADVOCATE. My lords, I am afraid that I must ask for a great measure of your indulgence, for unfortunately my voice has departed from me since I was here on Saturday, but I hope that your lordships will have the kindness to bear with the sort of croak with which I am compelled to address you, in order that I may get through my argument.

My lords, the discussion of this question has now occupied the time of your lordships and the public for many days, but I do not think that any person competent to form a judgment upon the gravity of the question submitted to your lordships' decision, and upon the possibly momentous result of that decision, will be of opinion that the length of time has been disproportioned to the importance of the subject. My lords, it is quite true that these important results depend upon the construction of an English statute; and, my lords, what has been often urged during the course of this discussion is equally true, namely, that this statute is now, perhaps with one exception, attempted to be put in force for the first time in this country. At all events, it is for the first time carefully and deliberately submitted to the decision of a court of justice. And, my lords, perhaps upon that observation there naturally occurs the reflection, first, that the very circumstance of its now being so submitted for the first time would make it incumbent upon the judge to be especially clear and distinct in the directions which he gave to the jury, and it also (if I may be permitted to say so) would furnish an excuse which every candid mind would admit for any possible misdirection or misconception of that statute, and of which the most accomplished judge in this kingdom would not disdain to avail himself.

My lords, although your lordships are perfectly familiar with the rules which govern the construction of statutes, I will take the liberty of referring your lordships to the expressions of my Lord Chief Justice Tindal in the case of the *Sussex Peerage*, which is in 11th Clark and Fennelly, page 143. I think, my lords, that nowhere is there found laid down with greater precision and accuracy the rule which ought to govern the construction of an English statute.

LORD CHIEF BARON. What was the statute then in question?

THE QUEEN'S ADVOCATE. It was the royal marriage act, my lord. His lordship says: "My lords, the only rule for the construction of acts of Parliament is that they

should be construed according to the intent of the Parliament which passed the act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the law-giver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe mean of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer, is a key to open the minds of the makers of the act and the mischiefs which they intended to redress."

My lords, I derive another proposition of law, (familiar, I dare say, also to your lordships, but which, rather for my own guidance, I wish to mention at this time,) as it appears to me applicable to the construction of this particular statute, from Bacon's Abridgment, title "Statute," the second part of the "Rules to be observed in the construction of a statute;" it is in volume 7.

LORD CHIEF BARON. In Bacon's Abridgment, title "Statute," there is a particular rule given for the construction of penal statutes, and the rule which you have been laying down, and the rule which the attorney general insisted upon with reference to advancing the remedy to meet the mischief, does not at all apply, and never has been applied in this country, to the case of a statute creating a crime.

The QUEEN'S ADVOCATE. With permission, my lord, I was about to come to that in a moment.

Mr. BARON BRAMWELL. Mr. Justice Crompton says that he never knew a golden rule which was worth anything at all.

The QUEEN'S ADVOCATE. My lord, I am sorry for that, because it would seem that there could never be any science of the law at all.

Mr. BARON BRAMWELL. Nay, I beg your pardon; that is a very different thing. That is not the only case in which there is good sense in what Mr. Justice Crompton has said; but I think it is impossible to do more than to say that you must bring an honest mind to the interpretation of the statute.

The QUEEN'S ADVOCATE. Yes, my lord; but there are certain rules which have been acted upon in these cases. The words in Bacon's Abridgment which I was about to read are the following: "A statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." Now, I shall take the liberty of drawing your lordships' attention to the special application of that rule, if it be a good rule, to this statute. And your lordships will find, when we come to consider the words "equip, furnish, fit out, or arm," that if this be a sound canon of construction, it will have a great bearing upon the exposition of that part of the statute.

LORD CHIEF BARON. Then it is very remarkable that the attorney general at the trial did not address either to me or to the jury one syllable as to any distinction between those terms. The prosecution on the part of the Crown is apparently upon the footing that although there may be a distinction it is not worth telling the judge or the jury what it is. That is a fact.

The QUEEN'S ADVOCATE. I am sure that your lordship would not require me or expect me to enter into any discussion of the discretion which the late attorney general exercised upon that occasion. I must leave that to your lordship's own opinion. I can only say this, and I am bound to say so humbly——

LORD CHIEF BARON. I take it for granted that the case was conducted on the part of the Crown after full consultation with the present attorney general, then the solicitor general, who was in court the whole time; and from the beginning to the end of the case the attorney general never intimated the slightest difference between "equip" and "furnish" and "fit out." He said not one word about it. If, therefore, that is to affect the construction of the statute, it is now presented to us for the first time, at least in this argument.

The QUEEN'S ADVOCATE. My lord, the question of the late attorney general's mode of conducting the case has been often discussed during this debate, and I should be very loth to enter into it again; but I think I am bound to say that really our opinion was that he did conduct the case with very great ability and perspicuity. I am sure that your lordships will be of opinion that there is no reason why I should not address my argument, even if your lordships were to hear it for the first time, if it be worth hearing at all, and why I should not submit it to your lordships' attention. My lords, I therefore say that the particular passage which I have read as to each word having its meaning, and as to there being a canon of construction which forbids you to argue that the legislature dealt in a superfluous expression unless you are compelled to do so, has a great bearing upon the construction of this act.

Then the lord chief baron reminds me, as has been often said during the course of this discussion, that this is a penal statute, and therefore his lordship seems to think that neither the authority cited by the attorney general nor that cited by myself has a bearing when the peculiarity of the statute is considered. Now, I beg to draw your lordships' attention to the opinion expressed upon this point by a most eminent judge,

not indeed a judge of this country, but by a judge whose opinion nobody need be ashamed of following; I mean the opinion of Chief Justice Marshall, in the United States, and I quote from the fifth volume of Wheaton, page 96. The case is that of *The United States against Wittberge*, and he is there construing a criminal statute, with which I need not trouble your lordships. He is citing a statute respecting manslaughter upon the high seas, and he says: "The rule that penal laws are to be construed strictly is, perhaps, not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative and not in the judicial department. It is the legislature, not the court, which is to define a crime and to ordain its punishment." Then there follow these words: "It is said that, notwithstanding this rule, the intention of the law-maker must govern the construction of penal as well as of other statutes. This is true; but this is not a new independent rule which subverts the old; it is a modification of the ancient maxim, and it amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute, to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend." Now, my lords, by that canon of construction I should be quite willing that this case should be tried.

Mr. BARON BRAMWELL. It seems to me, with great respect, that that is very little more than saying that you are not to misconstrue the laws.

The QUEEN'S ADVOCATE. I suppose, my lord, that every canon of construction would ultimately resolve itself into that.

Mr. BARON BRAMWELL. It seems to me scarcely to be in words more than an elaborate statement that you are not to misconstrue them because they are penal laws.

The QUEEN'S ADVOCATE. That you are not to narrow the meaning out of a mistaken tenderness to the individual, so as to defeat the public policy of the act.

My lords, with respect to the application of the rule to this particular statute I have one other authority. I will ask your lordships to allow me to read a passage from Mr. Justice Story's judgment in the case of the *Gran Para*, which will be found in 5th Curtis's Reports, at page 304. I need not trouble your lordships with the whole of the case, as I am only reading it for the maxim which it contains. He says, speaking of the *Irresistible*, sailing out of the port of Baltimore, "She was not commissioned as a privateer, nor did she attempt to act as one until she reached the river La Plata, when a commission was obtained, and the crew re-enlisted. This court has never decided that the offense adheres to the vessel whatever changes may have taken place, and cannot be deposited at the termination of the cruise in preparing for which it was committed; and as the *Irresistible* made no prize on her passage from Baltimore to the river La Plata, it is contended that her offense was deposited there, and that the court cannot connect her subsequent cruise with the transactions of Baltimore." Now upon this it appears to me that Mr. Justice Story's words are well worthy of attention: "If this were to be admitted in such a case as this, the laws for the preservation of our neutrality would be completely eluded, so far as their enforcement depends on the restitution of prizes made in violation of them; vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew to become perfectly legitimate cruisers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired." Then follow these words: "This would indeed be a fraudulent neutrality, disgraceful to our own government, and of which no nation would be the dupe."

Then, my lords, the question immediately arises, what was the real object of this statute? and your lordships cannot have failed to observe the very different objects which, during the course of the speeches addressed to your lordships, have been assigned for this statute. Now, my lords, it is perhaps worthy of observation, that in the original speech which my learned friend Sir Hugh Cairns made in this case, not indeed directly addressed to the jury, but addressed to the judge in the presence of the jury, he expressed himself in the following language; this is at page 142* of the book; this was stated to my lord before he turned round to address the jury; it is about twelve or fourteen lines down the page: "The equipment is supposed to be with the intent that 'the ship or vessel should be employed in the service of a foreign state,' 'as a transport or store-ship,' and in order to make up the idea indicated in those words your lordship will observe that the vessel must be employed by a 'foreign state,' and the purpose for which the foreign state is to employ her is 'as a transport or store-ship;' and the latter words showing for what purposes, against any other prince or foreign state. But then, having got to the end of the clause which spoke of the 'transport or store-ship,' we commence with a new clause in the alternative, 'or with intent to cruise or commit hostilities against any prince.' The question is, to what is that last clause, 'or with intent to cruise or commit hostilities,' to be referred? I

* See page 80, line 37.

apprehend, on every principle of construction, that clause must be referred and carried back to the words 'ship or vessel,' and must be read as an alternative to the other clause, which likewise begins with the words 'with intent.' So that, as your lordship will see, there is an alternative supposed by the act of Parliament, equipping and arming any ship or vessel with either of two intents, and we must accurately discriminate what those two alternative intents are. The one of the two alternative intents is the one I have already read and spoken of, that the ship should be employed in the service of a foreign state as a 'transport or store-ship; the other alternative intended is,' (I pray your lordships' attention to these words,) "that she should be equipped with intent to cruise or commit hostilities; and the whole is overridden by the introductory words, that there is to be some person; the words are, 'if any person,' within her Majesty's dominions who is supposed to equip and arm a ship or vessel with one or other of these two intents. You must have a person; you must have him within her Majesty's dominions; you must have him equipping, furnishing, fitting out, or arming (whatever that may mean we will consider afterward) a ship or vessel, and you must have him doing so with one of two intentions. Then follow these words: "The other is the alternative intention, that she shall cruise and commit hostilities, with no reference there to whether she is or is not to be employed in foreign service."

LORD CHIEF BARON. I think you need hardly press the question at all. I believe that we were all satisfied that the correction of this part of Sir Hugh Cairns's address by the learned attorney general was quite right, and that this clearly does not require any comment at all.

MR. BARON BRAMWELL. That would be a prohibition of piracy simply, would it not?

THE QUEEN'S ADVOCATE. Yes, my lord.

MR. BARON BRAMWELL. For ships to cruise not in the service of any state would be piracy, would it not?

THE QUEEN'S ADVOCATE. Yes, my lord, and therefore I was contending that this construction of the act was manifestly an incorrect construction. My lords, the use which I was about to make of the citation was this, that this was an argument, so to speak, addressed to his lordship in the presence of the jury, who shortly afterward decided the case; and I must take the liberty of saying that I very greatly doubt whether the jury were fully convinced that this argument had nothing whatever to do with the case, which now appears to be admitted to be the fact. I very much doubt whether the jury's minds were entirely free from the notion that possibly this act was directed against privateering.

LORD CHIEF BARON. I rather think you will find that the learned attorney general who had an opportunity of addressing the jury, and of removing all error from their minds, thought it hardly worth while to notice this fact.

THE QUEEN'S ADVOCATE. That may certainly be the case, my lord; but, as a matter of fact, I was mentioning that this particular construction was put upon the act at that time, (what effect it might have had upon the jury I do not know,) and I was dealing with the fact for two purposes; first, to mention to your lordships that fact; and secondly, to show the difficulties which those who contend for the claimants in this case have been put to during the course of the argument in order to, what I must call, after all that has been said, evade the plain meaning and words of the statute.

MR. KARSLAKE. Might I call your lordships' attention to this fact? At page 211,* of the small book, when the learned attorney general was commenting upon that construction which had been put by my learned friend Sir Hugh Cairns, the Lord Chief Baron said that he did not agree with that expression, and there was an end of that argument—"In that I own I do not agree."

LORD CHIEF BARON. I wish that you would use the same edition as we have. You say that it is at page 211; what is it that you are referring to?

MR. KARSLAKE. I was mentioning, my lord, that when the learned attorney general was replying and commenting upon the construction which Sir Hugh Cairns put, your lordship said that you did not agree in that construction, and there was an end of the argument upon that matter.

MR. KEMPLAY. It is at page 201 of the large book.

THE QUEEN'S ADVOCATE. My lord, I have no doubt that that is so.

MR. BARON BRAMWELL. Will you allow me to cite a book by an author who, I regret to say, is no longer living, I mean Mr. Sedgwick, an American writer on statutory and constitutional law. He there makes this remark with respect to penal statutes: "But the rule that statutes of this class are to be construed strictly is far from being a rigid or unbending one, or rather it has been in modern times so modified or explained away as to mean little more than that penal provisions, like all others, are to be fairly construed according to the legislative meaning expressed in the enactment, the courts refusing on the one hand to extend the punishment to cases not clearly embraced in them, and on the other hand equally refusing, by any forced and nice construction, to exonerate parties clearly within their scope." That is at page 326. He cites a great number of authorities for that statement. This is the author of the book upon damages.

The QUEEN'S ADVOCATE. That would appear to me to be excellent sense.

Mr. BARON BRAMWELL. It is excellent sense, as anything I am sure from Mr. Sedgwick would be.

Mr. ATTORNEY GENERAL. My lord, I may be permitted to say that it has always seemed to me that the meaning of the old rule (supposed to make a distinction) was this: In ancient times wonderful liberties were taken to strain statutes so as to include matters plainly not within their words; it was said that those liberties were not to be taken with penal statutes. We now do not take them with any statutes.

Mr. BARON BRAMWELL (to the Queen's advocate.) That which I have read is your proposition.

The QUEEN'S ADVOCATE. Yes, my lord, and it agrees very much with the passage which I read from Wheaton.

Mr. BARON BRAMWELL. Entirely, I should say.

The QUEEN'S ADVOCATE. I am much obliged to your lordship.

Mr. BARON BRAMWELL. I cited it for the purpose of showing what I think is a good rule, and also out of the great respect which I have for the memory of the author.

The QUEEN'S ADVOCATE. My lords, still upon this question of what is the object of the statute, and it being admitted that that construction which was confined to privateering is necessarily abandoned as untenable, I come to consider the objects which have been assigned to this statute during the progress of the present argument, and of course it has not escaped your lordships that they have not been at all uniform on the part of the counsel who appear for the claimants. My learned friend, Sir Hugh Cairns, has adopted an argument which I confess appears to me, with great respect to him, to be of rather a fanciful character. He lays down two rules, and his second rule, he says, is this; it is at page 10* of his speech of Tuesday last: "The territory of a neutral power must be kept absolutely inviolate from anything which may be termed a proximate or immediate act of war, and the neutral government will have a right to complain if that inviolability, so defined, of the neutral territory is infringed either by the belligerent directly or by one of its own subjects at the instigation of the belligerent." Then, my lords, at page 14,† he lays down this doctrine. He says that he will not examine the curious point as to the cannon-shot distance from the shore; but he says "a line is to be drawn somewhere;" and then he says: "We find that, according to the rules of international law, it is allowable to a neutral state, and to the subjects of a neutral state, to carry and to deliver, outside that line or inside it, any of those articles which are called contraband of war, guns, ammunition, ships, or any other article which may be supposed. International law also holds that you might bring a ship to the outside of that boundary wherever it is drawn; that you might carry from the neutral state guns and ammunition, and warlike supplies of every kind, and deliver them into the ship outside the boundary, subject to the right of capture; the other belligerent, if so disposed and so able, might intercept the supplies, might capture the ship, and might seize the articles as contraband; but subject to that, the act might be done without any offense against the principles of international law." Then, a little further on, at page 16,‡ he puts into the mouth of the belligerent a sort of speech, the whole of which I need not read to your lordships, but he says: "The belligerent would say to the neutral power, 'You, on your part, must take care that what passes out of your territory shall pass out in such a state as that I shall have a fair chance of capturing or dealing (if I am entitled to capture or to deal) with it.'" And a little above that place he says: "You would not be allowed to go inside a neutral territory and arm and prepare for hostilities, in a way calculated to commit hostilities, a ship which afterward might sailly out of the neutral territory and go beyond the limit." And then there occur these very curious and remarkable expressions: "And without any intervening space occurring in which it might be captured by the belligerent power, commence hostilities with a ship so armed." So that I understand the position of international law, which Sir Hugh Cairns contends for, to be this, that it was an object of this statute, among others, to provide that a vessel might go out not armed, but all but armed in every other respect, to the boundary line, and that then there must be an intervening space in which the belligerent must have the right of capture, and that after that intervening space is passed over, it would be perfectly lawful to put arms on board. Now, my lords, I heard no authority cited for that position; it is perfectly novel to me. I think that it has not the warrant of any international jurist, or any decision of an international tribunal, but it does go a long way to satisfy me of the very great difficulties which those who argue for the claimants are placed under when they attempt to get rid of the plain words of the foreign enlistment statute, which effectually provides, as I should construe it, against such a substantial and practical violation of neutrality as would be committed in the circumstances mentioned by Sir Hugh Cairns. The doctrine of the necessity of an intervening space, after you have left the boundary line, is a doctrine invented only to explain away the obvious difficulty of allowing captures to be made in this way by a vessel equipped in a neutral port.

Now, my learned friend, Mr. Mellish, says that the object of this statute was to pre-

* See bottom of page 184.

† See top of page 186.

‡ See top of page 188.

vent an insult to this country, and he says that international legislation, like municipal legislation, waits till the mischief has happened. Mr. Mellish says, as I understand him, applying this doctrine to the construction of this act, that international legislation waits, as municipal legislation does, till the mischief has happened. Now there I take the liberty of joining issue directly with my learned friend. I say that it is a forgetfulness of the great peculiarity of this statute which runs through the whole of the argument on the other side. This statute is essentially a preventive statute, and so far from waiting, as my learned friend says, till the mischief has happened, it in a manner most peculiar, and by a machinery entirely its own, directed partly against individuals, whom it divides into two classes, the principal actor and the subordinate actor, and partly against the instrument of the individual, the ship itself, endeavors to prevent the evil from being committed, and it gives the Crown the immense power of seizing the vessel, as *ipso facto* forfeited by the particular act of either of these individuals. Therefore, I humbly submit to your lordships, that to omit taking into consideration that characteristic of the act of Parliament is to lose one of the main keys to its construction, and one of the principal clues by which you are able to thread the labyrinth of the words in which the idea is expressed.

LORD CHIEF BARON. It should be observed that a considerable part of the enactment is unnecessary. For instance, when it is pronounced to be a misdemeanor to do a certain act, by the common law, if a matter is created a misdemeanor it is a misdemeanor to attempt to do it, to begin to do it, or to aid or assist in doing it. That part of the statute with respect to aiding, assisting, endeavoring, and so on, was not necessary; but it was necessary to put those words in in order to create the forfeiture. If a particular act is made a misdemeanor, punishable by fine and imprisonment, I take it that the endeavoring to do it, or the aiding and assisting to do it, becomes immediately another misdemeanor, and I think that all misdemeanors are punishable unless forbidden to be so. The ordinary mode of punishing crime in this country is either by fine or imprisonment, or both.

The QUEEN'S ADVOCATE. Yes, my lord.

LORD CHIEF BARON. Unless the statute had mentioned those matters and annexed the forfeiture to the attempt, it is tolerably clear that where the act applied the forfeiture to the commission of the offense, it would not follow that the forfeiture would attach to the commencement of it or to the attempt.

The QUEEN'S ADVOCATE. My lord, my learned friend Sir Hugh Cairns in construing this act had recourse to two distinct heads of argument; he said, as I understand him: "I will look at what was *a priori* probable, I will consider what it is likely, regard being had to the history of the times, would be introduced into this act; and I will afterward consider whether the words which have, as a matter of fact, been introduced, are or are not in accordance with what one would probably expect to have found there." Now I do not propose to follow my learned friend at any length into that very agreeable and enlivening part of the discussion of this case, namely, the history which immediately preceded the act of Parliament. It might be and I suppose was quite competent to my learned friend to introduce a narrative of all those circumstances by way of placing your lordships in the position of the legislature, and enabling you to arrive at the meaning of the words; pretty much in the same way as in the interpretation of a will we are in the habit of hearing that the court must be put in position of the testator and know all the circumstances. In the same way, I presume, it was quite competent to my learned friend to enter into that discussion, which he did most ably, as he always does everything which he undertakes, and to entertain your lordships (for I think I must use that expression) with the extracts from Mr. Canning's speeches, and from those of other members of Parliament who took part in the debates upon the foreign enlistment act. My lords, I am not about to follow my learned friend.

LORD CHIEF BARON. The court of course would bear with much from the defendant's counsel which perhaps it might object to on the part of the prosecution. I own that it strikes me that speeches in Parliament and historical statements by a very eminent historian, Alison's history for instance, and some of those other matters, it is difficult to stop in an argument to set out what a defendant in a case may think necessary to state, but that mode of dealing with a legal question should be administered with a very sparing hand.

The QUEEN'S ADVOCATE. I quite agree, my lord, that I should have thought so too. If it was an error, I am not going to fall into it; but, my lord, as one never knows exactly what words do or do not, and what passages read do or do not, leave a sort of impression upon the minds of those who hear them, because it is impossible for any human being to say—

LORD CHIEF BARON. I should say that it should be *parca manu*, and would very soon become *satia*.

The QUEEN'S ADVOCATE. *Parcissima manu*, my lord. I have not the least objection to that.

Mr. ATTORNEY GENERAL. I do not think that I troubled your lordships in that respect.

LORD CHIEF BARON. Mr. Attorney General, I have no complaint to make of anything which fell from you, certainly; and indeed do not let it be supposed that I make any complaint with reference to Sir Hugh Cairns. I merely meant to advert to this, that many topics may be urged on the part of a defendant, as to which one does not immediately know in what they are to end. If the learned advocate for a defendant thinks that the matter is material, it is extremely difficult for the court to say that it is not so.

THE QUEEN'S ADVOCATE. My lord, I hope that I shall not sin in this matter, or incur your lordships' displeasure. I was only about to say, that it is very difficult, where extracts have been read in a very emphatic manner to the court, to say how much of the reasoning of those extracts may remain in the mind of the court.

MR. BARON BRAMWELL. Any one or more of four minds.

THE QUEEN'S ADVOCATE. Exactly so, my lord. I was not going to enter into any detail, but I think that when Mr. Canning's speeches are referred to, and you are called upon to gather from them that the intention of this act was simply to enforce existing international law, it is only fair to read the following extract, which is in a very few lines. Mr. Canning said: "The House had to determine, first, if the existing laws would enable her to maintain her neutrality; secondly, if the repeal of the laws would leave the power of maintaining that neutrality; and, thirdly, if both the former questions were negative, whether the proposed measure was one which it was fit for the House to adopt." That is in volume 4, page 151, of Canning's speeches, and it does, I think, express in clear language the principal object of the act itself. The object of the act was to enable the Crown to maintain its neutrality; that I consider to be the real object of the act, and it is very well expressed in that passage.

My lords, I might also say without going, as your lordships seem to intimate that one ought not to go, further into that part of the case, and I am sure I do not in the least wish unnecessarily, for physical reasons as well as others, to occupy unnecessarily the time of the court, that it will be in your recollection that Sir Hugh Cairns, in explaining the object of this act, entered into a discussion of the distinction which, as a matter of international law, is to be made between the acts of the individual and the acts of the state. Now, my lords, that is a branch of the argument of no mean importance, because my learned friend Sir Hugh Cairns made use of it, as I understood, in this way. He said: "There are certain acts which the individual may do, and which in one sense are lawful, that is to say, they are not prevented by the positive law of his own country; and those very same acts, if done by the government, might be a breach of international law;" and he instances the case of contraband. He says that the contraband carried on by the individual is no offense, but that a contraband, or any act of a like nature, aided or assisted or carried on by the government, would be a breach of international obligation.

Now, my lords, if considerations of that kind are to have any weight at all with your lordships, if you are to consider at all that you can arrive at the meaning and the object of the act from any *à priori* considerations, it is worthy of your lordships' attention that there are no two propositions of international law better founded, I think, than these, that there are acts done by individuals which do (regard being had to the number of them, and the occasion of them, and the manner) sometimes, and not unfrequently, implicate the state, and that it is an unquestionable proposition of international law that the state is presumed to know such acts of its subjects as I have described, and moreover to have the power of repressing them; and that it is no answer to a foreign government to say, "Very true, there came out of the port of Liverpool twenty-five Alabamas, or twenty-five Orestes, which have destroyed the whole of your commerce upon these seas, but then they were the acts of an individual ship-builder—they were the acts of A, B, and C, and do not come to the government, for the government has nothing to do with them."

My lords, I protest earnestly against that doctrine; I believe it to be wholly unfounded in reason; I believe it to have no warrant in international law; and, my lords, without occupying your lordships' time with any pedantic display of learning, I venture to say that the question, which civilians are in the habit of considering under this title, "*Civitas ne deliquerit an cives*," "is this an offense in which the state must be held implicated, or is it an offense confined to the individual?" is one of the most interesting parts of the international law which is called "*nobilissima questio juris gentium*," and I will give your lordships references to certain jurists where you will find it most ably discussed. Your lordships will find it in Grotius, book 2, chapter 21, under the title of "*De Penarum Communicatione*," and he enters into it with all his learning, and shows that there are acts of the individual of which the government cannot be supposed to be ignorant; at all events, that the maxim is a sound one, that the will of the individual is bound up with the will of his country upon those occasions, which furnishes no answer on the part of the state. Your lordships will find a commentary upon that chapter of Grotius in "Heineccius's Commentaries."

LORD CHIEF BARON. What volume?

THE QUEEN'S ADVOCATE. It is all in one volume.

Mr. BARON BRAMWELL. The only edition which I have is in six volumes.

The QUEEN'S ADVOCATE. No, my lord; not upon Grotius. There is only one volume upon Grotius. It is a commentary upon Grotius's work, and it is his commentary upon book 2, chapter 21. And, my lords, there is a very clear and valuable writer I think, though not much thought of, but of whom Sir James Mackintosh thought a good deal. I refer to Burlamaqui's *Principles of Politic Law*—it is in volume 2 of the London edition, page 255, and he enters at great length into this consideration. I will just read to your lordships a very short part of it. He says, "We may further observe that in civil society, when a particular member has done an injury to a stranger, the governor of the commonweal is sometimes responsible for it, so that war may be declared against him on that account. But to ground this imputation, one of these two things is necessary, viz, either that the sovereign has suffered this harm to be done to the stranger, or that he has offered a reprieve to the criminal. In the former case it must be laid down as a maxim that a sovereign, who, knowing the objects of his subjects, suffers them to practice piracy on strangers, renders himself criminal, because he has consented to a bad action, the commission of which he has permitted, and consequently furnished a just reason of war."

Something to the same effect is to be found also in Vattel, though more loosely. And here I may take the liberty of saying, with respect to the citations from Vattel which were made by Mr. Mellish, that it is always to be borne in mind that upon a question of this description Vattel is a most untrustworthy authority, because, being a Swiss himself, and having been accustomed to enormous enlistments of soldiers going out of Switzerland, he occupies a portion of his book in defending that as being no violation of the law of nations. His bias was greatly affected by that particular fact, and upon that peculiar point he is not a very good authority.

Now, my lords, I think that I am entitled, although they do occur in a parliamentary form, to read to your lordships the expressions of the judge of the High Court of Admiralty when he sat in Parliament; I refer to no less a man than my Lord Stowell; because what he said was on rising in his place as the judge of the High Court of Admiralty, and holding a neutral position.

LORD CHIEF BARON. Was that in the House of Lords?

The QUEEN'S ADVOCATE. No, my lord, in the House of Commons; I will give your lordships the exact words. At all events, I will make them my own for the sake of the argument. Your lordships will find them in Hansard's Debates, vol. 40.

Mr. BARON BRAMWELL. I cannot see why that is not as citable as Burlamaqui. I do not see why Sir William Scott's opinion in the House of Commons is not as much a matter to refer to as Burlamaqui or anything else.

LORD CHIEF BARON. Or a speech of Mr. Canning in the House, or of Mr. Huskisson, who quoted Mr. Canning.

The QUEEN'S ADVOCATE. Yes, my lord. I did not mean to travel into that particular class of citation, but I think this is really exceptional from its character. It was on the debate in 1819.

LORD CHIEF BARON. That which is sound sense upon the subject in hand before us, and expressed in clear language, must always be welcome, from whatever source it comes or whenever it was delivered.

The QUEEN'S ADVOCATE. It comes with great authority from Sir William Scott, and this is what he says: "There could be no solecism more injurious to itself or more mischievous in its consequences, than to argue that the subjects of the state had a right to act amicably or hostilely with reference to other countries without the interposition of the state itself. It was hardly necessary to press these considerations, because all the arguments which he had heard upon the subject had fully admitted that it was the right of states, and of states only, to determine whether they would continue neutral or whether they would assume a belligerent attitude; that they had the power of preventing their subjects from being belligerent if they agreed to it." There is also language which I would, without mentioning where it comes from, make part of my speech. "When ships were employed in the service of any power whatsoever without a license from the British government, such an enactment as this was required by every principle of justice; for, when the state says, 'We will have nothing to do with the war waged between two separate powers,' and the subjects in opposition to that say, 'We will, however, interfere in it,' surely the House would see the necessity of enacting some penal statute to prevent them from doing so, unless, indeed, it was to be contended that the state and the subjects who composed that state might take distinct and opposite sides in the quarrel."

Now, my lords, these arguments and these citations I really do think have a direct bearing upon this part of the case, because they go in aid of my proposition, that the real object of this statute was to enable the Crown to observe not a nominal but a real and practical neutrality in these cases; it was to place the Crown in a position in which it might have an answer to foreign states when they said, "Out of your harbors come all these privateers, and all these armies of men come out of your country." It

was to enable the Crown not to punish, but to prevent such proceedings taking place, and thereby, in plain English, to enable this country to remain at peace.

My lords, permit me to make one more citation upon this point from the life of Washington, by Chief Justice Marshall. Perhaps your lordships may have read the book; it is a book of very great authority upon any questions of law which are contained in it, because it was written, I believe, by Chief Justice Marshall after he was Chief Justice. In the fifth volume, at page 488, where he is speaking of the very act about which so much has been said, namely, the first foreign enlistment act of the United States, he uses these words: "It being confessedly contrary to the duty of the United States, as a neutral nation, to suffer privateers to be fitted in their ports as a neutral territory, it seems to follow that it would comport with their duty to remedy the injury sustained, if in their power to do so. That the act has been committed before the government could provide against it might be an excuse, but it is not a justification. Every government is responsible for the conduct of all parts of the community over which it presides, and is supposed to possess at all times the means of preventing an infraction of its duty toward foreign nations."

And now, my lords, I would address myself to the part of the argument which has reference to the variety of words which the legislature has used to prevent the commission of this offense; "equip, furnish, fit out, or arm;" and I claim in aid the maxim from Bacon that you are not to presume that these words are superfluous unless you are compelled to do so by the whole gist and scope of the statute. Now, my lords, there occurs this remark immediately. If arming alone was intended to be struck at, which is the proposition on the other side, what on earth would have been easier than to have left out "equip, furnish," and "fit out?" If the legislature intended only to strike at the overt offense of arming, it was really heaping words upon words for the purpose of misleading those who had to put in force the act.

LORD CHIEF BARON. I that suppose that you will favor us with the distinction between "ship" and "vessel."

THE QUEEN'S ADVOCATE. My lords, there is no doubt a distinction between a ship and a vessel; there may be, at least, a very great distinction between a ship and a vessel.

My lords, it is said on the other side that this argument applies equally to the omission of the word "build," and it is said upon the other side, "what would have been easier than to have put in the word 'build' if it was intended to prevent the building of ships, and not merely the hostile equipment of ships?" My lords, I think that there are good reasons for the omission of that word. It was intended not to interfere with ship-building, properly so called—it was intended, my lords, not to raise any question, as I should imagine, as to the property of the ship-builder in any way—in any of those commercial questions which are familiar to your lordships, as to when the property may pass from the ship-builder into the hands of the orderer, and so forth. It was intended to avoid all the questions which might possibly arise from "building," as distinct from "furnishing, fitting out, equipping, or arming." And, my lords, some sanction to this argument (I do not press it further) is derived from the American foreign enlistment act, in which the words "building and equipment" do occur in portions of it, but as to which no one of the judicial decisions which have been given on the construction of the act makes any remark whatever as to its having any effect beyond that of "equip, furnish, fit out, or arm." Your lordships know that the words "building and equipment" do occur in one of the portions of the American enlistment act.

LORD CHIEF BARON. In one of the American acts the word "build" does occur.

THE QUEEN'S ADVOCATE. I say so, my lord.

MR. BARON BRAMWELL. "The materials for building," I think.

THE QUEEN'S ADVOCATE. It is so, my lord.

MR. BARON BRAMWELL. The materials for building are forfeited.

THE QUEEN'S ADVOCATE. I will read your lordships the passage: "together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof."

Now, my lords, I submit to your lordships' attention this argument, in the first place, that the word "equip" has a well known mercantile and legal sense as well as an ordinary etymological sense. The word "equip" will be found used over and over again in the judgments of Sir William Scott, or my Lord Stowell, during the prize cases which were disposed of during the war. And your lordships will see this (and it has a bearing upon the other parts of the argument) that he continually speaks of ports of a mercantile equipment and ports of a military equipment, and he is continually considering when these cases are brought before him, whether the equipment is of the one character or of the other, and deciding the case with reference to the destination of the vessel and the intent of the equipper.

Now, my lords, I think that it is not wholly inapplicable to refer your lordships to the etymological meanings of the word which are given in various dictionaries; I say it cannot be wholly inapplicable, for the lord chief baron himself, in summing up to

the jury, cited them from Webster's Dictionary. Now, I think that almost the best definition which I have found is in Todd's Johnson's Dictionary. I there find the following statement: "It is properly a naval term, *equippe* being the old French for a sailor, and so used in the thirteenth century, derived perhaps from the barbarous Latin *echipare*, to furnish or adorn vessels, whence *echipper* or *equipper*, as Janius has observed, was easily formed. See also Du Cange on *echipare*. And thus our own word was also first written *equippe*, and used in the naval sense, as by Barret in 1580, to *equippe* or furnish ships with all necessaries." That is a word which we do not use now, but still it meant all that was ablement to enable the manning of a ship.

My lords, in the French Dictionary de l'Académie, under the word *equipement*, you will find a doctrine to the same effect. I will also refer to Miltitz's *Manuel des Consuls*, a very learned work—it is upon the meaning of all the commercial treaties where the words occur—he sets out at length all the commercial treaties. In his first volume, and at page 13 of the Appendix, he says, "Equipment, qui comprend aussi les gens de l'équipage et les vivres," which I submit is clearly the right meaning of the word—it it comprehends the manning and victualing of a ship; and in volume 2, page 415, and at note 4, he is drawing a distinction between *bagage* and *equipe*; he gives the Latin for "*equipe*" in this way—"*vicious apparatus*." Now it is familiar to all who practice in the admiralty court that the words which are used in protest are "her tackle, apparel, and furniture."

There is a book also of some merit, called "Burns's Naval and Military Technical Dictionary of the French Language." I hold the book in my hand, and under the title *equipement* he says: "Armament, manning, accouterments, stores for the voyage;" and under the title *equiper*, he says "to equip, fit out, arm, provide, and furnish—provide with necessaries or stores—supply, stock, and so forth."

Mr. BARON BRAMWELL. I should think that the defendants would not object to the definition that to "equip" meant to man and victual.

The QUEEN'S ADVOCATE. Not necessarily to man, my lord. It comprehends that, and putting stores—anything toward furnishing the ship in that way.

Mr. BARON FIGOTT. I dare say you know "Falconer's Marine Dictionary." I have looked at it, and he says, "A term frequently applied to the business of fitting a ship for sea, or arming her for war."

The QUEEN'S ADVOCATE. Yes, my lord; that exactly bears upon what I was about to cite from my Lord Stowell's judgment in 5th Robinson, page 314. It was the case of the *Charlotte*. It was a case of contraband masts, Russian property, and so on. Lord Stowell says: "It is then said that the cargo was going to the public arsenal of the enemy. It was going to Cadiz, which is a place of great military equipment; but it is a place of great mercantile equipment also; and it does not appear, I think, exactly as it had been represented, that those articles were to be delivered to the public arsenal of the state. What has been said on the other side is, I think, true, that the nature of the port is not material, since masts, if they are to be considered as contraband, which they will be unless protected by treaty, are so without reference to the nature of the port, and equally whether bound to a mercantile port only, or to a port of naval military equipment. The consequences of the supply may be nearly the same in either case. If sent to a mercantile port, they may be there applied to immediate use in the equipment of privateers, or they may be conveyed from Nantes to Brest, and there become subservient to every purpose to which they could have been applied if going directly to a port of military equipment." Therefore, the argument which I wish to found upon this, is, that the word "equipment" is clearly not necessarily connected with military equipment, and unless you are to import into this statute after the word "equip" the words "for warlike purposes," or say equip in a manner which will give a definite warlike character to the word, unless you are to import those words into the act, the maxim of Bacon stands unshaken, and there is a distinct meaning to be given to "equip" quite in consistency with the whole purview and bearing of the act, which is not to step in when the act is done and punish, but to prevent the completion of a particular act which implies a continuance, something going on and being done, and surely that would be a very good reason why the word "equip" should be used, a word well known to all nautical men, well known to all commercial men, having a meaning which there was no reason to suppose was not present to the legislature at the time, and a meaning perfectly consistent and in keeping with the whole spirit and purview of the act.

My lords, my learned friend the attorney general cited to your lordships the case of the *Richmond* in this volume, and it may be convenient to refer also to the case of the *Brutus*, which was decided by the lords of the privy council; and there were several cases, a summary of which is thus given by the learned editor in the Appendix: "It will appear from the comparison of these cases, that though the principle of considering the sale of ships of war to the enemy as contraband is strictly held by the decisions of the court of appeal, the application of the principle has been restricted to cases in which no doubt existed as to the character of the vessels or the purpose for which they were intended to be sold."

Mr. BARON CHANNELL. Is that in the same volume, namely, 5th Robinson?

The QUEEN'S ADVOCATE. The same volume, my lord, 5th Robinson, in the Appendix.

Now, my lords, it is said, as I understand, "Well, but this word 'equip' and your mercantile equipment are words *ancipitis usus*," and a great deal is made of that argument in substance throughout the whole of the address of my learned friend Sir Hugh Cairns, and the addresses of those who followed him. It is said, that the act interfering with the liberty of the subject, and with the prerogative of the subject, never meant to deal with the matter, or to attach criminality to a ship for that class of equipment which might or might not be of a certain character. Now, my lords, I dissent entirely from that opinion. In the first place, my lords, the very expression *ancipitis usus*—the very word *anceps*, or "doubtful," implies that the equipment is fit for both; it implies that it is fit for one and for the other, and then you will bear in mind the intention of the act, which was to prevent.

My lords, there were during the war, (and I mention it to your lordships because it may possibly furnish some contribution toward elucidating the difficulties of this case,) as I have no doubt your lordships are aware, a vast number of cases brought before my Lord Stowell upon the question of contraband. He had the duty imposed upon him of considering in all its bearings the meaning of this phrase, *ancipitis usus*; and in one judgment, my lords, in 1st Robinson, pages 194 and 195, (the name of the ship was the *Jonge Margaretha*,) he thus most perspicuously, I think, expresses himself upon this point. It was a question of whether hemp and cordage, and other articles of that description, were or were not intended for warlike uses; and he says: "The most important distinction is, whether the articles were intended for the ordinary use of life, or even for mercantile ships' use, or whether they were going with a highly probable destination to military use. Of the matter of fact on which the distinction is to be applied, the nature and quality of the port to which the articles were going, is not an irrational test; if the port is a general commercial port, it shall be understood that the articles were going for civil use, although occasionally a frigate or other ships of war may be constructed in that port. Contra, if the great predominant character of a port be that of a port of naval military equipment, it shall be intended that the articles were going for military use, although merchant ships resort to the same place, and although it is possible that the articles might have been applied to civil consumption." Then he gives, in a passage often cited since, his definition of articles *ancipitis usus*, "For it being impossible to ascertain the final use of an article *ancipitis usus*, it is not an injurious rule which deduces both ways the final use from the immediate destination." Now I claim the application of that principle. It is not an injurious explanation which deduces the final use from the immediate destination. What was the immediate destination of this vessel so equipped and furnished and fitted out? Why, it is not denied now that she was for the Confederate States, for one of the belligerents in this case.

Mr. KEMPLAY. My learned friend ought not to say that.

The QUEEN'S ADVOCATE. I will not say that it is not denied; but I will say that it is as plain as the mid-day sun, that that was the object for which the vessel was intended. Then, I say that I claim the reasoning of my Lord Stowell; a better reasoning cannot be adopted; it is entitled to the highest weight in a court of justice, and more especially in a case of this description. You have bulwarks, you have stanchions, and you have hammocks, and you say, "Oh! but those may be found on board a yacht," because it is always to be remembered that the evidence in this case does not carry it beyond that. Captain Inglesfield's evidence, which everybody admits is "*omni exceptione major*" is that those things might be used for a yacht. Does anybody believe that the vessel was intended for a yacht? or that anybody was hiring a yacht for the Confederate States in this case? It was for a belligerent use. I will admit, for the sake of the argument, that the equipments might have been *ancipitis usus*, and might possibly have been fitted for a merchant vessel, though there is no evidence of that; but for the sake of the argument, I will admit that it is possible that this particular article of equipment might have been fitted either for a man-of-war or for a merchant ship; and then, I say that you must look to the destination in order to ascertain for what it was intended; and is not that position in exact harmony with the act? Are not the words "with intent or in order that?" Have you not to consider throughout *quo animo* and *quo intuitu* this was done, and to look at the consequences for a moment of any other construction? It is quite clear that these vessels may now be so constructed (it is matter of general notoriety) that, without being pierced even with port-holes, their bulwarks may be so built that swivel guns may be put upon them, and they may be a most effectual instrument of destruction of belligerent ships. And then, getting rid of my learned friend Sir Hugh Cairn's most ingenious suggestion, that there must be an intervening space between the boundary line of three miles from the shore and the putting on board of those guns, just conceive the facility of evading and eluding every provision of the act. You send this ship out equipped, if you like it, in a manner which possibly would suit a merchant ship; you send swivel guns out from the same port three miles off, or in the little intervening space, if you like it, though I

do not understand that argument, and you put them on board, and does any reasonable person mean to say that the belligerent government would not have just ground of complaint against the neutral government; and (to use Mr. Justice Story's emphatic and burning words) that the neutral government was not guilty of a fraudulent neutrality, and that of which no foreign nation could be the dupe.

Now, my lords, as to the words "furnish" and "fit out," your lordships will remember the explanation which my learned friend the attorney general put upon them. It is perfectly clear that all the words are susceptible of different significations. The effect of the word "arming" does not occur in this case. But I will say one word, with your lordships' permission, upon the argument which is derived from the eighth section of this act, what I may call the argumenting section, the section which refers to a vessel of war coming into a port, and some augmentation taking place.

Mr. BARON BRAMWELL. Suppose that any furnishing of a ship, however pacific her equipment might be, it being intended that she should be armed when she got out of the territory of the neutral, was said to be a fraudulent neutrality according to the language of Mr. Justice Story; and suppose it was true that any supplying of a ship, or furnishing, or equipping of her, however peaceful, was within the foreign enlistment act, why might not similar language be applied to the case of a builder, having put the ship together, taking her to pieces, and sending out the pieces to be put together abroad. Why might it not be said, this is a fraudulent neutrality, because you have only to go to the Azores, and the different pieces of this vessel may be taken out and put together, and then it may be said that you do not send a ship out? It is very difficult to draw the line.

The QUEEN'S ADVOCATE. I should have thought, my lord, that that was a very strong illustration of the practical difference.

Mr. BARON BRAMWELL. There is a very strong illustration of the practical difference between a ship in a condition of offense and one in no condition of offense.

The QUEEN'S ADVOCATE. If the act had said that you shall wait before the ship is in condition of offense, that argument would be applicable, but the whole of the act is the exact contrary.

Mr. BARON BRAMWELL. What I really meant was this: without expressing any opinion, which I certainly shall not do till the proper time arrives for doing so, one cannot help seeing this, that if the case is to be argued upon principle, one side may be arguing it as you are arguing it, "why this is only doing the same thing in effect as that which you know is prohibited, but doing it by a subterfuge, and a shift, and an evasion." On the other hand, it may be argued, "if, therefore, you would prohibit this, which is a shift and a subterfuge, why should you not prohibit the next step, which will be a shift and a subterfuge, and then why not prohibit the next step, and so on, and where are you to draw the line?" I do not say that there is not a more marked distinction between a ship in a condition to receive an armament, and the pieces of a ship in a condition to become one; there may be a more marked distinction between the first two things than there is between the latter two; but still it is a very difficult subject to handle, with great respect to those who have been so warm upon this subject. With very great respect to those who have been so eager in their denunciations of the unfairness of this country in the matter, they will find it extremely difficult to stop when they say that nothing shall be done which is in substance the same thing as that which ought not to be done.

The QUEEN'S ADVOCATE. I am sure that if your lordship were in the condition of a belligerent state, you would see a great practical difference.

Mr. BARON BRAMWELL. I should be very angry; there is no doubt about that.

The QUEEN'S ADVOCATE. You would see a great practical difference between portions of timber sent out to be put together in a foreign country, and a ship sent out able to do a great deal of mischief, and able to take all her own guns on board three miles out. There is no saying how she might be constructed, and how she might be built. She might be built so as to run down the first belligerent ship she met.

Mr. BARON BRAMWELL. I dare say that the Great Eastern, with a most innocent equipment on board, would be a most formidable antagonist.

The QUEEN'S ADVOCATE. My lords, I was going to say one word on the argument used upon the eighth section and the use of the words there, "equipment for war." My lords, it only shows in what very different lights the same passages may strike persons who are bound, perhaps, to take different views of the case; but if I had been asked what portion of the act I should most rely upon for showing that the word "equipment" in the other section was not necessarily a warlike equipment, I should have found that portion of it in this section. Because what is said here? The state has nothing to do with the vessel which comes in; the state cannot be guilty in any way whatever where a man-of-war or a privateer comes into her port ready equipped and furnished and fitted out for war; and according to the common law of humanity, which is part of the law of nations, she permits a vessel of that kind to do the necessary repairs, and take food and water, and so on, on board. But if she added anything to her equipment of war, she would then be placing herself under a responsibility toward foreign states,

and then the mischief in this case of the eighth section, so to speak, is supposed to be done. It is supposed not that the state can step in to prevent this vessel which has come into her port from being equipped; the vessel comes in equipped, and therefore all that she can do to maintain her neutrality honorably and fairly toward other nations is to say that she shall get no addition to her warlike equipment in this port. And, my lords, upon all principles of construction of a statute, the fact of the words "equipment for war" being in the one section, and the words "for war" not being in the other, would go a very long way toward supporting my argument. I am sure, without wearying your lordships, that innumerable cases might be found where a word being used with a particular epithet attached to it, giving it a distinctive character in one section, and in another section without that distinctive character, it has been argued that the legislature intended a different meaning in the two sections.

My lords, these are the observations which, I hope not at undue length, I have thought it my duty, regard being had to the position which I have had the honor to fill, to address to your lordships. And, my lords, in conclusion, I may be permitted, I think, to ask your lordships to consider carefully one criterion for the construction of the statute to which I have not yet adverted. It is true that this is an English statute, as it has been said, and is to be construed by an English court upon English principles. One would be very sorry to find that those principles are at variance in any way with common sense, and with the spirit of all fair jurisprudence. I deem that not to be the case. I believe that nothing can be more equitable and more just than the English principles on this subject, for the English principles of the construction of statutes are derived in a great measure from the Roman law, in perfect accordance, as far as my researches go, with the rules for construction adopted in the codes of foreign jurisprudence. But if there be a criterion which ought to have more weight than another with a court when there is a real honest doubt as to the meaning of the statute, it is that which is furnished by the consequences which result from the rival positions of the contending parties. Put the construction which my learned friends are contending for upon this statute, and we have their own admission of what the consequences would be—a federal Woolwich inland—a confederate arsenal at Liverpool; bloodshed and rapine within three miles of our shores. How long do your lordships think it would be possible for this country to maintain her neutrality in that state of things? Put the construction upon the act which we contend for, and your lordships will preserve to the Crown her power of maintaining neutrality with foreign states, will preserve to this country her honor among the family of nations, and will preserve to this people the inestimable blessings of peace.

Mr. LOCKE. My lords, I ought, perhaps, to apologize to your lordships for addressing you after the very able, powerful, and learned speeches which have been made upon the subject; but, my lords, I consider it my duty if I can throw any light upon the matter, however small, or bring any fact before your lordships, of however minute a nature, which shall bear upon the question, as far as my ability will allow me to state these matters for your lordships' consideration.

Now, my lords, I shall not go at length into the case, but I may perhaps be allowed shortly to remind your lordships of the position in which it stands. My lords, it is quite obvious and clear that there was an intention to fit out this ship, there was an intention on the part of somebody to do so, and I think upon the evidence it will be shown that there is ample reason to believe that the purpose for which this ship was to be fitted out was ultimately to be a warlike purpose. My lords, the evidence shows this clearly, that there were Messrs. Fraser, Trenholm and Company, a firm who were clearly in connection with the confederate government, and that that firm from time to time furnished the means of carrying out the objects of the confederate government. It is clearly shown that Messrs. Miller and Company, and likewise Messrs. Fawcett and Company, were in the employment of Messrs. Fraser, Trenholm and Company, in addition to others whose names appear upon the information, namely, Captain Bulloch, Captain Tessier, and Mr. Hamilton, whose name, however, does not appear there. They were all connected with the transaction, overlooking the ship from time to time, and upon these facts I think there can be no doubt that this vessel was being fitted out for the Confederate States.

Now, my learned friend Mr. Karslake asked who it was that the Crown charged in this information, or rather who it was that was pointed at by the evidence as the party directing this matter. My lords, it appears clearly upon the evidence that whatever was done, or whatever was to be done, was done at the instigation of the Confederate States, through Messrs. Fraser, Trenholm and Company, who were the active agents of the Confederate States, employing other agents under them, for the purpose of carrying out the views of the government of the Confederate States, in arming vessels against the United States, with whom they were at war, and with whom this country was at peace.

My lords, a great deal has been said in the course of the argument upon what has taken place out of this court, both in the House of Commons and among the public. Sir Hugh Cairns called the attention of the court to those arguments which were used at

a time when the public certainly knew very little about this question, and I am sure I am justified in making that observation, when I remember what has fallen from his lordship. His lordship is well acquainted with all subjects which can possibly form the subject of discussion, whatever they may relate to. Whatever science or whatever question of politics we may have to inquire into, there is no man in this country better acquainted with the subject than the lord chief baron. But we have it from the lord chief baron himself, that he is free to confess that his mind upon this particular subject was not at the time of the trial properly "equipped and fitted out;" and I believe that it was only on Saturday or Friday last that a question which the lord chief baron had himself frequently put throughout the trial, and indeed throughout the whole of this inquiry, was answered, I will not say to the satisfaction of the lord chief baron, because we have not been able to satisfy him in the conduct of this case as much as we should have desired; but the question which the lord chief baron put was, "May a man not build a ship upon a contract and sell it to anybody that he likes?" That was the question put to my learned friend the late attorney general upon the trial, and the lord chief baron complains that the late attorney general did not answer the question, and did not bring his mind to "equip" his lordship's upon that question, and upon the rest of the case. Now, I believe, my lords, as I was stating, it was only on Saturday or Friday last that his lordship had the satisfaction of receiving an answer to that question, and then it was a qualified answer, it was an answer given by the attorney general, and the attorney general, who, all must allow, has conducted this case with an ability which probably has never been surpassed, was obliged to give a qualified answer to the question, after having considered it as we all have done from the time when it was first put. The answer was, "Oh, certainly, a man may build a ship, and he may sell it to anybody, whether he be a belligerent or whether he be not; but he must not do it with the intention which is declared to be illegal by the seventh section of the foreign enlistment act." Therefore, I think that the late attorney general, seeing how fully that question has since been considered by everybody, is not to be so much blamed because he did not answer it off-hand; and I am sure that his lordship will bear me out when I say that counsel conducting a case, particularly a case at *nisi prius*, are not anxious to have those disagreeable questions put to them by the court, and particularly by a judge of so much knowledge, so much research, and so much acuteness as the lord chief baron, because, of course, not possessing the powers of the lord chief baron, we, to use a vulgar expression, sometimes imagine that his lordship is endeavoring to get us into a hole, and therefore I may perhaps be permitted on the part of the late attorney general to say, that in my humble opinion I do not think that the course which he adopted upon that occasion was a course which most of us would not likewise have adopted; that is, not to get into an embroilment with a judge of such powers as the lord chief baron, but to confine himself to the purposes of the moment; I will not say to postpone the truth to the purposes of the moment, but to confine himself to what was the question which he was then upon before the jury, and to reserve himself for that question without embarrassing himself with any other.

Now, my lords, as I was stating, a great deal has been said in this court, a great deal out of the court, and a great deal in the House of Commons, and likewise in another place, namely, the House of Lords, with regard to this great question of the foreign enlistment act. Now what was said I heard said myself, over and over again, in the House of Commons, previously to what the lord chief baron said here, and the lord chief baron, no doubt, although judges seldom read the newspapers, had read the debates in the House of Commons.

LORD CHIEF BARON. Not on the bench.

MR. LOCKE. Then I am right in assuming that his lordship had read those debates, and his lordship, though a judge, and holding the high position which he did, was not altogether ignorant of the opinions expressed by others in this sublunary world with respect to this question, and I think I shall not be contradicted by any one when I say that the general opinion throughout the country was this: they, never having read the foreign enlistment act, (and certainly I do not blame them, considering the immense trouble that the study of this act has occasioned to those who have been engaged in it,) came to precisely the same opinion as his lordship, and it was this—if a man may sell gunpowder, if he may sell cannon balls, if he may sell muskets, if he may sell shells, or any other destructive weapon, why on earth may he not sell ships? And if his lordship will pardon me I would say, upon the point of his lordship's charge being calculated to mislead the jury, that the question asked out of doors, "as you may sell gunpowder, cannon balls, and shells, or any other destructive articles, why may you not sell an armed ship?" was the question which the lord chief baron asked in this court.

Now, my lords, a good deal has been said here upon the subject of the inconvenience to the ship-builders.

MR. BARON BRAMWELL. I really do not think that any one of the learned counsel for the defense did say that.

MR. LOCKE. On the trial, my lord.

Mr. BARON BRAMWELL. They did not say it in the argument, and I was very much struck with it.

Mr. LOCKE. My lord, it was on the trial I think that there was a long argument by Sir Hugh Cairns upon the question of *malum prohibitum* and *malum in se*.

SIR HUGH CAIRNS. No.

Mr. LOCKE. That Sir Hugh Cairns said that I am quite certain, for this reason, that I never could forget anything which fell from Sir Hugh Cairns, and there was a long argument upon the distinction between *malum prohibitum* and *malum in se*. That I recollect perfectly, and that argument was made use of with respect to ship-builders, and it was urged in this way, that the ship-builders were doing nothing whatever that was in itself wrong, and that therefore their case, it was argued, was a hard case to be interfered with by the government.

But, my lords, it appears to be an argument which by no possibility ought to have any weight, in this court at any rate, because this is a court which deals in hardships, or rather deals with them; and I may call to your lordships' attention an act of Parliament called the customs consolidation act, and I may remind your lordships that if a man has a few pounds of tobacco on board his yacht which has come into port and he has not paid duty, that yacht is subject to be seized, and that from time to time yachts and other vessels, where the owner is perfectly innocent, are seized by the customs when they have any contraband on board. And what is the reason alleged? That it is for the protection of the customs. And, therefore, when gentlemen are building a man-of-war to go out, and on the part of the confederates to fight against the federals, and when probably the effect of that may be to bring this country into war with the federal States, I do not think they have much to complain of where an embargo is placed upon a vessel under those circumstances, it being the ordinary course in this country where offenses are committed in ships, or by ships, or through ships, that the first thing done is to seize the ship, and it is upon this principle that the seizure has been made upon this occasion.

But again, what particular hardship is there in that? Subsequently Messrs. Fawcett, Preston and Company put in a claim to this ship and say that it is their own. But, my lords, what would have been the inconvenience if they were acting honestly and rightly, or, at all events, if they did not intend to infringe the provisions of the act of Parliament by fitting out this ship for the confederates for the purpose of making war against the federal States? What was more easy for them than at once to have given an explanation, and to have shown for what purpose this ship was fitted out? That is the ordinary case in the customs. We do not hear any great outcry made when a ship of any individual which may have contraband on board is seized; for if a satisfactory explanation is made to the commissioners of customs the ship is immediately released. And I use those arguments, my lords, because they arise out of the evidence in the case, and it is a strong feature to show what the intention of these people was, that when they had the opportunity of getting their ship entirely freed from the trammels of the law they did not avail themselves of that opportunity at all, but they come in at the last moment and put in a claim, and then they say, "We will endeavor as far as we can to get out of the meshes of this act of Parliament and show how it does not apply to us." My lords, they have sailed as near the wind as they possibly could, but I think that they have sailed so near the wind that it will be taken out of their sails. They have made that endeavor, and now I come to the mode in which they have attempted to do it.

Now, my lords, I shall take the argument of my learned friend, Mr. Mellish. It would be ill-becoming in me to take the argument of my learned friend, Sir Hugh Cairns, seeing that it has been taken to pieces, and that he cannot have an opportunity of putting it together again, and it has been commented upon throughout; but why I would take the argument of Mr. Mellish is this, because he puts the case on the part of the defendants as concisely, I think, as it can possibly be put; and if that definition which he has made of their case will not hold water, then it is perfectly clear that they have not evaded the provisions of the seventh section of the act of Parliament, but, on the contrary, they are clearly within them.

I wish to call your lordships' attention to the definition given by Mr. Mellish in the proceedings of Thursday, the 19th of November. *Vide* page 254.* Mr. Mellish says: "Having had a little experience of the great skill of my learned friend, the attorney general, I know his great skill in remarking upon the different views which have been taken by the different counsel who are opposed to him; and, therefore, I say that in presenting the view which I am about to present to your lordships, I, of course, am not to be taken as in any degree abandoning or qualifying what has been previously said by my learned friends." Now, that is very well for Mr. Mellish to say, but it will be for your lordships to say whether, if Mr. Mellish be right, he does or he does not demolish any of his learned friends. But that is perfectly immaterial for the sake of the argument which I am endeavoring to address to your lordships, because I put it that Mr. Mellish understands this case as well or indeed better than anybody. Mr.

* See page 280.

Mellish understood it long before any of us thought about it, and Mr. Mellish puts it in this short and concise manner. He says: "But I venture to go to this extent, that it is perfectly legal, under this act of Parliament, for any ship-builder in this country to build a ship." Now, nobody can dispute that fact. Then it goes on, and this is a part of his speech which requires careful attention: "Perfectly well knowing that it is adapted for war, under a contract with one of two belligerents; and to equip that ship, so far as is necessary to enable it to sail away from this country, and to deliver it to the belligerent either here or elsewhere in that unarmed state." Now, Mr. Mellish entirely leaves out in that the intent with which it is built, the guilty intent which is alleged in the act of Parliament, and which creates the offense. But there is another word which he has left out, and it comes in between "ship" and "so." I think he should have introduced, in order to have met the facts of this case, the word "only," so that it would have read, "only so far as is necessary to enable it to sail away from this country;" because unless he puts in the words "only so far," he does not meet this case, and for this reason, that all our evidence, (if we are upon the question of a warlike equipment,) and it was a mass of evidence, went to show that there was more done to this ship than was only necessary to enable it to sail away from this country.

Now, my lords, what was done to this ship? What was necessary to enable that ship to sail away from this country? *Sail* she would not, because she would steam. Was it necessary to have her bulwarks made of a particular description? Was it necessary that stanchions should be fixed to the side of that vessel in which to put the hammock nettings? Was it necessary, in order to enable an ordinary ship to sail away from this country, that she should have an extraordinary rudder? And, therefore, I say that Mr. Mellish's position is untenable, because upon the question of armed equipment with regard to this ship more was done to it than was necessary to enable it to sail away from this country. With regard to the ship being built under a contract, I dare say this ship was built under a contract; and if the defendants had chosen they might have produced that contract, and if they had produced a contract to show that the ship was built for the Emperor of Japan, or the Emperor of China, or any person of that description, no doubt it would have gone a long way to show that this was an innocent undertaking. But whether it is by a contract, or whether it is not, does not appear to me, my lords, to alter the case at all. The question is, Who was it built for? If it was built under a contract for any of the illegal purposes alleged in the seventh section of the foreign enlistment act, then the ship would be clearly forfeitable. Mr. Mellish continues, "and to equip that ship, so far as is necessary, to enable it to sail away from this country and to deliver it to the belligerent either here or elsewhere in that unarmed state." Now, my lord, whether a ship-builder might do that would depend upon what the intention was, and it appears to me that Mr. Mellish puts it upon the very ground upon which his lordship put it at the trial. May you not do that particular thing Mr. Mellish says? Mr. Mellish upholds his lordship's ruling at the trial, and contends that that is right and legal. I submit, in the first place, my lord, that the mode in which Mr. Mellish puts it is not a true statement in the first place of what was the condition of that ship; but that if there be the intent, even the state in which Mr. Mellish says the ship was, is not a state which would make the ship not liable to be seized. My lord, it is quite clear with respect to the fittings out, that there was to some extent a warlike equipment of that ship. It certainly was not completed. But, my lord, if to any extent there was a warlike equipment, where is the line to be drawn? because if it is to be a complete equipment, a man might build a ship and put in every portion of the armament except one gun; it would not be completed. And therefore I must say, that I think that way of putting it, namely, the ship not being completed, is one of the most futile arguments that possibly could be adduced; because if the question turned upon the thing being completed or not completed, it would be the most simple thing always to carry out the work of the ship to a certain extent and not quite complete it. But the question arises, Is it completed sufficiently to show the purpose with regard to warlike equipment? It is a vessel with bulwarks belonging to a man-of-war, and I would call your lordship's attention (which has not been drawn to the point in the course of this argument, showing cause against the rule) to the picture of the ship, the photograph which was put in evidence on the trial, and I think it would save the court an immense deal of trouble if they would only look at that, because you might as well say that you would look upon the picture of an elephant, and take it for a horse, as that you would look at a photograph of this ship and take it for a merchant ship. If anybody has ever seen a gunboat, this was a gunboat in every sense of the word. It has every appearance of a gunboat. But in addition to that, there was evidence as to its component parts; how they were made up, how the ship was built, what was the nature of its bulwarks, what was the nature of its rudder and above all as to its having those stanchions put up for hammock nettings, which hammock nettings act as a shield for the ship.

(The court adjourned for a short time.)

MR. LOCKE. I was saying, my lord, that whether or not the ship were completed is

perfectly immaterial. The question is, What indications, with regard to whether there was any warlike equipment or not, were there upon that vessel to show that she was intended for a vessel of war—and I call your lordship's attention to the evidence with respect to the hammock racks and stanchions—and, my lord, those hammock racks and stanchions would act as a shield for that vessel. Now certainly we have arrived at a time when the use of gunpowder has done away with the necessity of using the ordinary shield in battle by land, but I think it would never be contended that if in olden times a maker of armor had supplied a shield he would not have been supplying a warlike equipment. Now, therefore, if those stanchions were put up with a view of placing upon them the hammock racks, and if, as we have it in evidence, those hammock racks are used in vessels of war for the purpose of protecting the men against the shot of the enemy, they are certainly, as far as they go, most clearly a warlike equipment. But, my lord, as has been observed, to show that this vessel was being fitted out for the purposes of war —

LORD CHIEF BARON. If you are contending against the argument of Mr. Mellish; which I collect you to be from the continuity of your sentences, let me point out to you that Mr. Mellish expressly says that it was a ship of war—he avows it to be a ship of war, and says it is perfectly lawful to fit out a vessel of war. His argument is, that you must not send it away in a condition to be used as a vessel of war.

MR. LOCKE. I will call your lordships' attention to page 18, where Mr. Mellish lays down his proposition that it is lawful for a ship-builder to equip a vessel in the way he there states, "and to deliver it to the belligerent either here or elsewhere in that unarmed state;" and therefore I presume, my lord, that he assumes that to make it lawful to fit out the vessel in the way to which he refers, it must be entirely in an unarmed state.

LORD CHIEF BARON. Oh, dear, no. I do not imagine that is his argument at all.

MR. LOCKE. What I understand him to say is this. In point of fact you may build the hull and deliver that to either of the belligerents in an unarmed state. But what I am contending for is, that that was not the case with this vessel at all; it was not a mere hull, and it was not delivered to the belligerent, and would not have been delivered to the belligerent, even as far as it had then gone, in an unarmed state, inasmuch as it had those stanchions placed for the hammock nettings, which were, in point of fact, an equipment for war. With regard to the hammock nettings, I submit that they were to act as a shield against the enemy. A shield to be used on land would be a warlike equipment, and I should assume that a shield to a ship would have a similar signification. But, my lord, in addition to that there was the cooking apparatus.

LORD CHIEF BARON. If a Roman soldier, for instance, went into battle with a shield only, without a sword, you would hardly say that he was armed.

MR. LOCKE. He is armed against the enemy certainly. He is armed with the shield; and if it were not for the shield, he would probably have a javelin through his body. I cannot recollect the precise quotation, but I am sure in Homer, where Achilles put on his armor—

LORD CHIEF BARON. He added an offensive weapon to all that.

MR. LOCKE. He did. But suppose he had not had time to get an offensive weapon, nobody can contend that he would not have been partly armed; he would have put on as much armor as he could under the circumstances. All I contend for is this, that a shield is part of the armor, and that the stanchions and the hammock racks are part of the armor.

LORD CHIEF BARON. It has several times been observed that privileges which are given under particular statutes are meant as a shield and not as a sword; you, no doubt, remember the use of that expression.

MR. LOCKE. Yes, my lord. When we bear in mind what we arm our ships with now, this is certainly a mild sort of shield, because, I presume, it could only be effectual against rifle-shot. But what do we call the shield we put upon the new vessels of war? It is called "armor plating," that is, the shield to preserve the ship; and would anybody say that with that armor plating the Warrior was not armed? I conceive that anything that is done to the ship which enables it to act as a man-of-war —

LORD CHIEF BARON. That turns upon a mere question of terms, what we call "armor" and what we call offensive "weapons."

MR. LOCKE. Yes, my lord.

LORD CHIEF BARON. A shield may be in one sense armor, but certainly it is not a weapon of attack. Long ago I received a good bit of philosophical advice, which was this: Where you have any discussion going on, find out whether it is really a question of some foundation or principle, or whether it merely means by what name you shall call something, for the moment you find it a question as to the meaning of terms, you had better give it up and look at a dictionary.

MR. LOCKE. When we look, it does not always give us the exact definition we want; and dictionaries vary —

LORD CHIEF BARON. Very much.

MR. LOCKE. At different times; and we must take a dictionary of our own times.

Probably a dictionary ages ago, when they had no guns to use, would not much help us.

LORD CHIEF BARON. The meaning of words alters altogether; formerly "to let" meant "to hinder," and now it means "to permit;" formerly the word "prevent" meant "to go before and assist," now it means "to go before and hinder."

Mr. LOCKE. With regard to this—it is for your lordships to put what construction you like upon it—it appears to me that putting a shield to a ship, such as the armor plating that the Warrior or any of those vessels has, would be arming it to a certain extent. Then, with regard to the cooking apparatus, that was provided for a number of men that could not by any possibility be required on board any vessel but a vessel of war. It was for one hundred and fifty or two hundred men; that was stated in evidence not to have been necessary for any merchant ship, nor for any yacht, but only for a vessel of war. Besides that I should call to your lordships' attention that the bulwarks were of a particular height, different from that of any merchant vessel; and if I recollect rightly, those guns that were being manufactured were of such a height as to fire over these bulwarks. It was not distinctly shown that the guns had a number on them for the vessel; but this was clearly shown, that at the very same moment and in the same place that they were making the machinery for the ship, they were making the guns, as we assumed, for the ship likewise. Now, my lord, the machinery was made and put on board; the guns were not intended to be put on board there; they were sent up to London, and, as we assumed, they were to be sent on afterward and put on board the ship.

But, my lords, I would contend that an armed equipment is not at all necessary. I will not go into that question at any length; but if your lordship would allow me (and your lordship has thrown out that you would pay attention to anything said by any one that might throw any light upon this question) I would call your lordships' attention to the case which I mentioned before, namely, the case of Granatelli, which was tried in the central criminal court, on Thursday, July the 5th, Friday, July the 6th, and Saturday, July the 7th; in the year 1849. Now, my lord, with respect to that case, in the first place, I believe your lordships would call this clearly an authentic report; it is the short-hand writer's note of the case at the central criminal court, and it is contained in a book in which all those reports are bound up, and probably your lordship has it—or perhaps your lordship has not preserved it—as Mr. Baron Channell said they were sent to all the judges.

Mr. BARON CHANNELL. The judges on the bench at that date would have a copy of it.

Mr. LOCKE. There was present the right honorable the lord mayor, Mr. Justice Coltman, Mr. Justice Maule, Sir John Key, and other aldermen. Mr. Justice Coltman and Mr. Justice Maule were the two judges present at the central criminal court on that occasion, and I should mention who the counsel in the case were, more especially after what fell from your lordship with respect to Mr. Baron Martin, because he was a counsel in the case. The statement of that case is this: "Franco Maccagnone Granatelli, commonly called Prince Granatelli, Lewis Scalia, and John Moody were indicted (together with Salvatore D'Amico, who did not surrender) for unlawfully, and without the leave of her Majesty, equipping, fitting out, and furnishing a certain vessel, called the Bombay, with intent to commit hostilities against the King of the Two Sicilies. Other counts for a conspiracy, and varying the manner of stating the charge." That is all that the note gives of the case apart from the evidence. Sir Frederick Thesiger, with Mr. Clarkson and Mr. Bodkin, conducted the prosecution; Mr. Baron Martin defended Scalia. This report gives the cross-examination, but it does not say who the counsel appeared for, but we can collect that from the evidence.

Mr. BARON CHANNELL. My brother Martin and Sir Fitzroy Kelly were both counsel against the Crown.

Mr. LOCKE. I think Sir Fitzroy Kelly was counsel for Prince Granatelli. I do not know whether Mr. Baron Martin was for Scalia or not, but Mr. Montague Chambers defended the other defendant, Moody. The case occupied three days; it was most fully gone into certainly, and in the result there was a verdict of not guilty; but I must call your lordships' attention, as has been done with regard to other matters in this case, to the state of public opinion at that time.

LORD CHIEF BARON. You had better not refer to that at all. I must appeal to you to assist in the administration of justice by not making reference to such matters. What have we to do in this case with public opinion now, or at any other time?

Mr. LOCKE. I will tell you. This was a prosecution in the year 1849, not instituted by the Crown. Immediately following the French revolution of 1848 there was a rising in Sicily against the Neapolitan government, and your lordship, I am sure, will bear in mind that at that time there was a strong feeling in this country, and which, I believe, continued down to the time of Garibaldi, very much in favor of the Sicilians.

LORD CHIEF BARON. In favor of every resistance to oppression all over the world, wherever occurring.

Mr. LOCKE. Yes, certainly. Seeing that this was not a government prosecution, that it was a prosecution instituted by the Neapolitan government themselves, upon which

their ambassador was examined in the court, it is not extraordinary that there should have been a verdict of not guilty; but, my lord, I mention the case as showing that this precise question arose in it.

MR. BARON CHANNELL. What the lord chief baron stated the other day is in accordance with the modern practice. For the dispatch of business one judge sits in one court and another judge in a separate court. When a case of any considerable importance comes on it is not unusual for the judge to request his brother judge to sit with him. On those occasions it is customary for each judge to take part in any question of law which may arise. In the case you are referring to, Mr. Justice Maule presided with Mr. Justice Coltman in the way I have supposed, as one of the judges attending to the case.

MR. LOCKE. I have no doubt that was so in a case of this description which lasted three days, and where for the first time—

MR. BARON PIGOTT. Unless you can give us the direction of the learned judge, it is not of much use referring to the case.

MR. LOCKE. I am about to do so. It has been assumed that this is the first time that this question has come before a court of justice. Precisely the same question came before the central criminal court in that case, with this exception, that was an indictment, but it did not make any difference with respect to the point of law as to equipment. It was an indictment against those parties for equipping the vessel, the *Bombay*, for the Sicilians to act against the Neapolitans, who were at peace with us at that time, therefore that is precisely the same case. I will first call your lordships' attention to this, that Sir FitzRoy Kelly, in addressing the jury, said: "The prosecution was not by the government, but by a foreign prince to punish his own subjects." That was Sir FitzRoy Kelly's argument, and certainly a very strong one to an English jury. Then he went on, on the point of law, to argue "that the vessel could not be considered to be equipped until fully provided with men and arms." Mr. Justice Coltman then said, "He did not go along with the learned counsel; the act of Parliament expressly made a distinction between fitting out and arming." Now, my lord, that certainly, if it could be taken as a decision, goes a long way to explain the seventh section of the foreign enlistment act; at all events it disposes of the question which has been very often mooted and very much discussed before your lordships, whether, in the first place, fitting out and arming were not the same thing; and whether, in point of fact, if there were a fitting out, it must not be an armed one. But it appears to me that Mr. Justice Coltman lays it down, that fitting out a vessel and arming a vessel are two distinct things. I will read such parts of his summing up as bear upon this; he says: "There are three separate charges in the indictment" —

MR. BARON CHANNELL. What you are reading from is not the full transcript, as I understand you.

MR. LOCKE. No, my lord.

MR. BARON CHANNELL. The corporation employed a short-hand writer, whose report, as I understand, you are reading.

MR. LOCKE. This is not from the corporation report; this is from what I have obtained from the Times newspaper, but I use it, after what fell from the lord chief baron the other day. He said he could consult Mr. Baron Martin upon this question, Mr. Baron Martin having been engaged in this case. If what I state now from the report in the Times should be incorrect, there is no doubt that Mr. Baron Martin would set it right.

LORD CHIEF BARON. Mr. Baron Martin is not here.

MR. LOCKE. No; but your lordship stated the other day that you could confer with him.

LORD CHIEF BARON. The only way in which such materials could be usefully presented to the court as an authority would be by the learned judge who was then a counsel in the case, refreshing his memory and telling the court what he considered was the decision in that case, if there was any.

MR. LOCKE. Perhaps your lordship will allow him to refresh his memory from this statement.

LORD CHIEF BARON. What I said was this: send the materials to Mr. Baron Martin, because it is in vain to present them to us; we know nothing about it, and you can hardly suppose that we shall communicate with Mr. Baron Martin, putting him in possession of those materials, and asking him to form an opinion upon them.

MR. LOCKE. There were three separate charges in the indictment, first, enlisting sailors; second, enlisting soldiers; and third, (which is the most important,) "fitting out a vessel with the intent to employ it for warlike purposes against the King of Naples. A good deal had been said with regard to the intention of the act of Parliament, but at present he should tell them that if they were satisfied that the vessel was fitted out for the purpose of committing hostilities against the Neapolitans, and that the object was so far carried out as that by putting the armament on board" —

LORD CHIEF BARON. You are now only reading from the Times newspaper. It is the first time such a thing has been attempted in this court.

MR. LOCKE. There are only three more lines, my lord.

Mr. BARON BRAMWELL. I think it very objectionable. If that is to be read, every newspaper report is equally entitled to be read in a court of justice.

Mr. LOCKE. I have endeavored to get the short-hand writer's note, but unfortunately I have not been able.

LORD CHIEF BARON. You see it is not because you have endeavored to get what is good, that therefore we are to put up with something that is not good.

Mr. LOCKE. Then I will use this as my own argument. "If the object was so far carried out as that by putting the armament on board she would have been ready to go into action, that would be quite sufficient."

LORD CHIEF BARON. What you are doing is this, you are insinuating to us that that was what the learned judge ruled; that is the object of using that argument. It is really doing the same thing that you object to as having been done in the case of the *Alexandra*, that is, pretending to do one thing and doing another.

Mr. LOCKE. I understood your lordship this morning to say that any opinion expressed in clear language that might throw light upon this subject would be welcomed by your lordship, from whatever source; and I am certain that your lordship has throughout the whole of this case relaxed the strict rules with regard to arguing cases of this description.

Mr. BARON BRAMWELL. That is like saying, that my lord has done what is wrong, as I understand.

Mr. LOCKE. A question certainly arose in the first instance, whether what was said in Parliament should be used, and it was used; but, however, I will not dwell further upon the subject, I was only anxious to call your lordships' attention to the opinion of a learned judge, who had the question before him for the first time, and who was assisted by Mr. Justice Maule.

Now, my lord, I will refer to that book of Mr. Gibbs, of which your lordship has spoken so favorably, and your lordships will find him, after fully considering the question —

LORD CHIEF BARON. Are you proposing to give his opinion?

Mr. LOCKE. I mean merely to quote what he says with regard to equipment.

LORD CHIEF BARON. You can hardly quote that.

Mr. LOCKE. Very well, my lord. Then I will call one matter to your lordship's attention, with respect to the course that has been pursued in these matters by the American government; and perhaps I should be allowed to read from Mr. Gibbs's book, not his opinion, but an extract from a senate document of the first and second sessions, thirty-fourth Congress, page 238. Now, my lord, that relates to a vessel called the "*Maury*," and brings us down to the year 1855, during the Crimean war, and I use it to show the course that is pursued in the United States, and also to show that if the defendants in this case had chosen to act openly in the first instance, and had explained what their object was, and had shown that that object was an innocent one, the vessel would, of course, have been at once released. Now, this was the seizure of the *Maury*, in the year 1855, by the American government, on the information of Mr. Crampton, the English minister. He stated that he had reason to believe that she was being fitted out for the Russian service, and that other vessels were in progress, intended to intercept the mails between Liverpool and Boston. It appears that the *Maury* had on board at the time fourteen guns, muskets, side arms, ammunition, and timber. In that case the vessel, at all events, was libelled, and was placed in charge of the marshal, (I use this to show that the vessel in that case was actually seized,) but upon an explanation being given, the vessel was set at liberty with the full sanction of the English consul. Now, my lord, if they had chosen to give an explanation in the present case, a similar result might have followed if the purpose had been an innocent one, therefore we have a right to assume that no such explanation could have been given.

I should like, before I sit down, to make one or two observations with regard to the summing up of the learned lord chief baron, and that only with respect to what has fallen from his lordship in the course of this argument, namely, that he had no information given him in this case with reference to what was the question which was to be decided.

LORD CHIEF BARON. I did not say no information was given about the matter at all.

Mr. LOCKE. No information as to what the point was upon which the counsel for the Crown would rely in the explanation of the foreign enlistment act. Now, my lord, I wish to refer your lordship to what fell from the late attorney general in opening this case.

LORD CHIEF BARON. To what page are you referring?

Mr. LOCKE. I will refer your lordship, in the first place, to page 5,* where the learned attorney general states to the jury what this information is; that it is a proceeding for forfeiture; and he then cites the act of Parliament, and then describes all the persons who are connected with the transaction; and he states what the object of the act of Parliament is, namely, to enforce the observance of neutrality in the event of war

* See page 3.

between states with each of whom this country might happen to be in friendly relations. He clearly states the object of the act of Parliament, namely, for the purpose of enforcing upon the subjects of this country that neutrality which is for the benefit of the common weal of the nation. He then goes on to describe what had been done with respect to this vessel. He then says at page 11,* "I think you will find that the vessel, as a hull, is complete. The masts are in, and were in at the time of the seizure, because the vessel has very properly remained from that time to the present in the state in which she was found at the time of the seizure. The hull is complete, the masts are in, the rigging appears to have been, I think, from that photograph, commenced, and the boiler, for it was a screw steamer, a screw propeller, the screw was in, and the boiler was in, but I think the fittings of the boiler were not complete. At all events, gentlemen, the vessel had proceeded so far that there seemed to be, and I believe there was, no difficulty whatever in determining that the destination of the vessel, in whatever quarter of the world it was intended she should be employed, was a warlike destination. Now, gentlemen, that brings me to the next step in these proceedings. The seizure having been made, it then became the duty of the attorney general to file an information, that is to say, to make a certain statement, in proper form, of the grounds upon which the seizure had taken place, and upon which the legality and justice of the seizure was intended to be rested, and which were to be relied on to warrant the forfeiture which is sought in the present proceedings. That information is based on the section to which I will direct my lord's attention rather than yours, the seventh section of the foreign enlistment act. The LORD CHIEF BARON. I have read it just now. The ATTORNEY GENERAL. The information, as my lord knows, by this time is a very voluminous document. In truth, neither you, gentlemen, nor any one else, unless my learned friends on the other side think proper to embark in the affair, no one need trouble themselves about the lengthy information or the multitude of counts contained in the document. The number of counts, as my lord will understand, is rendered necessary, or prudent, at all events."

LORD CHIEF BARON. What is the object of reading this?

MR. LOCKE. To show that the exact question was raised at the trial.

LORD CHIEF BARON. Come at once to where that point arises. You need not tell us that the attorney general told the jury that there were ninety odd counts, and only eight to which attention need be paid.

MR. LOCKE. It is part of the sentence to which I wish to call your attention. "The number of counts is rendered prudent, or necessary at all events, by the very numerous words of description of the violation of the statute which occur in the section on which it is rested."

LORD CHIEF BARON. I believe we know by this time all the act by heart.

MR. LOCKE. Yes; but what I am upon is, that that information which we all of us have now, was conveyed to your lordship at the time of the trial by the late attorney general.

LORD CHIEF BARON. Nobody doubted that. I am not aware that anything has fallen from anybody expressing any doubt about it.

MR. LOCKE. I understood your lordship not only to express doubt, but to state that there was no single proposition laid down by the late attorney general by which your lordship could understand what it was that the Crown intended to rely on.

LORD CHIEF BARON. Nothing of the kind. You have totally misunderstood. I did not say no single proposition of any kind was laid down, but that the attorney general did not state any distinct proposition of law apart from the matter that was before us, so as to enable us to determine what he took to be the real meaning of the act. None of those distinctions that have been taken since were ever laid before the jury or me, and as I have observed again to-day, the attorney general did not mention if there were any distinction between the words "equip," and "furnish" and "fit out." He did not say one syllable about it. That is what I have said to-day, and it is true. From beginning to end you will not find in the attorney general's address to the jury a distinction drawn between one word and the other, so as to call their attention to what count they were to find the parties guilty of. The attorney general said: Upon the facts I shall prove, under the seventh section of the foreign enlistment act, you ought to find the defendants guilty. That is a very distinct proposition, and there is no doubt he laid that down; but that gives no light as to what he considered to be the meaning of the act.

MR. LOCKE. Then afterward the attorney general stated he should not merely rely upon the "equipping, furnishing, fitting out, or arming;" he stated that fitting out and furnishing were two distinct things.

LORD CHIEF BARON. But he did not say how they differed from each other. Really, Mr. Locke, I think it would be better if you would apply your observations to the real subject-matter. I never said anything like what you ascribe to me. The attorney general laid down no distinct proposition about the matter. No doubt he said the

* See page 7.

defendants were liable to be found guilty under the foreign enlistment act, under the circumstances he would prove; but he took no distinction between one word and another, between one meaning of the act and another meaning, and did not call the attention of the jury in any degree, in the way in which the present attorney general called our attention the other day, to the meaning of the act applied to various subjects.

Mr. LOCKE. I think your lordship will find that the late attorney general laid down a distinction between equipping, furnishing, fitting out, and arming, and said that if either equipping, furnishing, or fitting out were proved, it was sufficient; and your lordship will find he clearly laid down that he should rely upon the attempt to do any one of those things, and should call upon your lordship to leave that question to the jury. Now, my lords, certainly the learned attorney general did not in his opening go on to distinguish between all those different things, equip, furnish and fit out, but he stated to the jury that he should rely upon them; and, my lord, the course taken by the learned attorney general was, I think, the course which is usually adopted. A counsel does not say, I shall give up a certain portion of my case in opening it; he waits to see what the distinctions are which are taken by the other side, and then, when the other side have taken those distinctions, he deals with them. I think your lordship will find that the late learned attorney in his reply applied himself to every one of those distinctions after they had been raised by Sir Hugh Cairns; and I may refer, as an exemplification of that, to what has occurred to-day. When my learned friend, the Queen's advocate, was meeting the argument of Sir Hugh Cairns, your lordship interposed and said it is unnecessary that you should argue that point; that point was taken by the late attorney general, and I ruled with him; I was of his opinion at the trial. That was his reply to Sir Hugh Cairns. But, my lord, this question certainly was mooted by the attorney general, and was relied upon by the attorney general, that the attempt to commit any of those acts, if that was proved, would be sufficient to bring the parties within the act.

LORD CHIEF BARON. No one doubted that.

Mr. LOCKE. That point, I submit, was not put to the jury by your lordship in a way in which they could understand it.

LORD CHIEF BARON. That you can say what you like about.

Mr. LOCKE. And that is one of the grounds upon which this rule was obtained, namely, that the attempt to commit any of those acts was not put to the jury by your lordship. I certainly have read the summing up as carefully as I could, and I do not see in any part of it where that question was put to the jury; and if so, my lord, I should submit that upon that ground alone we should be entitled to a new trial. It will be unnecessary for me to go into all the arguments that were used throughout your lordship's summing up; that has been done by the learned attorney general and by those who have preceded me; but what I wish to call the attention of the court to is, that those questions were raised by the counsel for the Crown in the case, that they were brought to your lordship's attention, and that having been so brought to your lordship's attention, they were not submitted to the jury, or not submitted to the jury in such a way as that the jury comprehended what were the issues left to them.

My lords, I submit in this case that the information which has been brought by the attorney general has been clearly substantiated, that the defendants in this case have been clearly brought within the seventh section of the foreign enlistment act, that they have been shown to have equipped, furnished, and fitted out the vessel up to a certain point, within which point are contained sufficient elements to show that it was a vessel fitted out for the purposes of war; I likewise submit that it is clearly shown—and about that there appears to be no contest now, I believe, in the case—that that vessel was fitted out for the Confederate States and to make war against the federal States. At Liverpool, previously to the time at which these transactions were going on, vessels had been fitted out in the same way that the Alabama had been fitted out, and it was supposed, I presume, at the time that vessel was fitted out, that the mode in which the parties acted was not contrary to the provisions of the act of Parliament. A similar attempt was made in the case of this vessel, but it was stopped, and the question is, whether, in point of fact, it can be said, Oh, you stopped it too soon; something more ought to have been done to the vessel to enable you legally to stop it and to seize the vessel. I submit, my lords, that all the facts with reference to the vessel show what it was intended for. There is no question for whom the vessel was to be built; there is no question whatever as to the use it was to be put to; but it rests upon the narrow point raised by my learned friend Mr. Mellish—and that was why I was anxious particularly to call your attention to the position which he took, namely—whether what had been then done to the vessel could amount to an offense. With regard to the intent he says nothing; but the intent, as I should submit to your lordships, governs the whole of the transaction in such a way as to make it utterly impossible for the defendants to say that they are not within the provisions of the statute.

My lords, it is hardly necessary for me to repeat that this is a most important question

for your lordships' consideration; it is not merely an important question as regards this particular case, but it is an important question for this nation to know whether or not the Crown is to be that portion of the constitution which is to declare whether or not there shall be war between this country and foreign states, or whether any man who chooses for his own purposes, and to put money into his own pocket, shall be at liberty to endanger the peace of this realm and to bring us in contact with foreign nations. That is the real question in this case, and, put in that light, it is a most important one. Viewed with reference to Messrs. Fawcett, Preston and Company, as I have said before, I do not think that it is an important case at all. They have built this vessel for the Confederate States, and there is no doubt that as they have proceeded in building this vessel they have been remunerated for the expense they have been put to and for their labor. That, I believe, is the course which is always adopted, and therefore the question which your lordships have to decide is a question of importance as an international question, and not a question of importance as regards those persons who are the defendants in this case.

Mr. JONES. My lord, I am on the same side, and I propose to offer your lordships a few observations on the construction of this act of Parliament, or rather of the seventh section of it. Although the remarks which have been made and the information which has been brought before your lordships' attention has been very important, I need not say that the question really centers upon the construction of a few words of this section of the act of Parliament. Your lordships have, no doubt, been very materially assisted by the very able arguments which have been addressed to your lordships. But, after all, those arguments have principally been addressed to your lordships for the purpose of enabling you to put a construction upon the seventh section of the act of Parliament.

Now, my lords, I assume, for the purpose of my argument, that there was such an intention as is prohibited by the seventh section; and allowing this assumption, I say the questions arising on this rule resolve themselves into the single question, What is the meaning of these words in the information and in the act of Parliament, "equip, furnish, and fit out?"

LORD CHIEF BARON. I should say that the act of Parliament is directed against certain acts, and then that the attempt, the endeavor, the aiding, and the assisting, are made penal as well as the act itself.

Mr. JONES. Yes, my lord.

LORD CHIEF BARON. The act of Parliament is directed against doing certain things at a certain place with a certain intent.

Mr. JONES. Yes, my lord.

LORD CHIEF BARON. The place is some port in this country; the intent is (because the transports and store-ships were given up at the trial) "to cruise or to commit hostilities."

Mr. JONES. To be employed for the purpose of.

LORD CHIEF BARON. Then, the question is, What is the act? That depends upon what is the meaning of "to equip, to fit out, or to furnish."

Mr. JONES. That is precisely the way in which it struck my mind.

LORD CHIEF BARON. And too much stress must not be laid upon any one part of it. You must not say that I prove the intent, and, therefore, whatever was done with that intent was unlawful, whether it was within the precise words of the act or not, or whether it was meant to be done somewhere else. The crime that is created, the offense that is made by the act of Parliament, is doing certain matters in a port of this country with the intent to cruise or commit hostilities.

Mr. JONES. Yes, my lord.

LORD CHIEF BARON. Then, I apprehend, the only doubt that can exist is, what is the meaning of these words as applied to the subject, "to equip, to fit out, or to furnish."

Mr. JONES. That is the way in which I ventured at the outset to present it to your lordships, and that is the point to which, as I humbly observed, the matter must at last be brought round.

LORD CHIEF BARON. The intent, without the act or the attempt to commit it, can be nothing.

Mr. BARON BRAMWELL. You must not lose sight of the way in which the attorney general put it, which I understood to be this: that if there is a thing with an intent that it shall be employed for the service of a foreign prince—

Mr. ATTORNEY GENERAL. I rely emphatically upon this: that the ship should be employed by a foreign prince to cruise, and not go straight from the equipment to cruise.

Mr. JONES. I understood the lord chief baron to mean that—in short, I was going to ask his lordship to vary the expression if it did not mean that.

LORD CHIEF BARON. I meant merely to point out that there are three matters necessary to constitute the offense. The offense may be either doing the thing or attempting to do it. But supposing, which perhaps may be the most convenient way to have a distinct notion, you limit it to the act itself.

Mr. JONES. Say "equipped."

LORD CHIEF BARON. Then there must be, 1st, an equipment in a port of this country, and, 2d, it must be with the intent denounced by the act of Parliament.

Mr. JONES. Precisely so. If I may say so, the offense must include the combination of these two elements, or, in other words, it is the combination of these two elements which constitutes the offense.

Now, my lords, I have said that for the purpose of my argument I take for granted that the criminal intention is present. I proceed to inquire what is the equipping, furnishing, and fitting out forbidden by the section. I shall use the term equip as comprehending the words furnish or fit out. Now, looking merely to the act of Parliament itself, and looking particularly to one of the sections of the act of Parliament, namely, the eighth section, (which has been appealed to by Sir Hugh Cairns as throwing a flood of light upon the act,) for the purpose of interpreting the seventh section, I submit to your lordships that this eighth section contemplates two species of possible equipments. It contemplates a species of equipment which it does not forbid, and it contemplates a species of equipment which it does forbid. Your lordships will remember, without adverting again to the language of that clause, that the eighth section, addressing itself to the equipment of a pre-existing vessel in a neutral port, speaks of equipments for the sole purposes of war. I do not recollect whether that is the precise expression.

Mr. BARON CHANNELL. No, it is not.

Mr. JONES. "Any equipment for war." The precise expression is, any equipment for war. Now, my lords, when the act uses the expression "equipped" in the seventh section, your lordships will notice that it does not use in that section the word "equipment" in that sense and with that specific distinction which it ascribes to "the equipment for war" which is contemplated by the eighth section; and for very good reasons, because it is very easy to understand how there may be an equipment for other than purposes of war before the vessel is brought into the condition of a ship of war, and how there may be an equipment for other than purposes of war after the vessel has been brought into the condition of a ship of war; but the equipment forbidden is that which is described as an "equipment for war." The way in which I use that, and the manner in which I consider that that section does throw a flood of light upon the question, is, that inasmuch as you have by the words of that section an equipment described as an "equipment for war," inasmuch as you have the term "equipment" used in the seventh section without any such limitation, you must see that the legislature had in its contemplation two species of equipments; and the argument is clenched, if I may be permitted to say so, by the use in the seventh section of the disjunctive conjunction. When you see used in the seventh section "equip or arm," and when you see used in the eighth section "equipment for war," you have in effect in the eighth section an expansion of that expression "arm" in the seventh, and read by the light of the eighth section the seventh section says: "If any one shall equip a ship for the purposes of navigation, or for the purposes of war, with the intention, &c., the ship shall be forfeited." So that, the prohibited intention being present, the equipping for the purposes of navigation, which aids the execution of that intention, is as much forbidden as arming is. The term "arm," as used in the seventh section, is, in effect, the same thing, or at all events part of the same thing, which is included in the expression "arm for the purposes of war," used in the eighth. Now, my lords, passing from the eighth section to the seventh section, if you look at the provision with respect to the equipment which is spoken of in the seventh section as the equipment of a transport, you will find that the equipment of a transport does not suppose an equipment for the purpose merely of navigation, as distinguished from an equipment which would enable the transport, when equipped as contemplated by the act, to cruise or commit hostilities. The words "equip, furnish, and fit out" are applied not to a ship of war, or to a ship which is to cruise or commit hostilities, but they are applied to a ship which is not to cruise, which is not to commit hostilities, but which is to act as a transport or store-ship. When, therefore, you have got the word equip for the purpose of a transport, in reality you have a distinctive application made of that term "equip" in the seventh section, as importing an equipment other than an equipment for a hostile purpose, or in a hostile fashion. And, my lords, although it is true that the structure of the vessel, its capabilities, its adaptation to the purposes of war are very important to be considered when the intention is in question, yet, if you grant the intention, there is no use whatever in inquiring as to whether or not the structure of the vessel is such as to make it capable of being adapted for the purposes of war. If, indeed, the structure were such as that it could not be used as a transport, for instance, or could not be used for a cruiser, or to commit hostilities, that would negative the intention; but granting the intention, which of course could not be granted unless the vessel were of a structure which would suit it, and the possibility of its being executed by the structure in question, the kind of structure is not material; the intention being present, the question really is, whether the words "equip, furnish, and fit out" can by possibility extend to anything more than an equipment for the purpose of navigation. I address to your lordships those observations with reference merely to the words which are found in the act. I cannot help

thinking that when you find words in an act of Parliament capable of being interpreted so as to make the whole act consistent and intelligible, that is a far more valuable test than a discursive inquiry as to what the policy of the act may be. If you can see that a word is used in one section which is consistent with its interpretation in a fixed sense in that section, and which is consistent with its interpretation in that sense in other sections of the act, (say, in one other section of the act,) it would require a great deal indeed to show you, either from conjecture, or from considerations of policy, or from any consideration except some absurdity or repugnancy, that it should not be accepted in that fixed sense, which I venture to call the natural sense.

I shall presently offer to your lordships an observation or two with regard to the policy of the act, but I dwell for a moment upon the observation that the quality of that "equipping, furnishing, and fitting out" is only material when the intention is in question. When the intention is in question you look to see whether or not the structure of the vessel is such, or the fittings of the vessel, so to speak, are such as to reconcile and make the structure of the ship compatible with the existence of the intention, and I insist that to say the equipment must be an equipment for purposes of war is to confound the quality of the equipment with the purpose of the equipment, and I insist that the objection that the equipment must be a warlike equipment, that is to say, an equipment for the purposes of war, is a disguised repetition of the objection that the ship must be armed besides being equipped.

Now, my lords, granting that an equipment for the purposes of navigation is the equipment contemplated and prohibited by the act, the next question is, What is an equipment for the purpose of navigation? or, otherwise expressed, What, again, is the meaning of these words "equip, furnish, and fit out?" Of course they are not to be construed etymologically. The question is whether they are compatible with the reasonable interpretation assigned to them. Now, my lords, I do not think it is necessary for the purpose of this case or for the purpose of this argument to consider whether or not those words "equip, furnish, or fit out" must be such or are such as relate exclusively to the structure of the vessel, or whether they must be ancillary to an existing vessel or ancillary to the structure of the vessel; I apprehend it is not necessary in any point of view, but I apprehend it is eminently not necessary here, because I should say if that question had to be considered when you have the engines in the vessel, or partly in the vessel, surely that is a furnishing of an existing structure; when you have the cooking apparatus surely that is a fitting. But, however, it is not necessary for my purpose to consider that; it is sufficient for me to consider what is an equipment such as is contemplated by the act.

Now, my lords, I submit to your lordships that any commencement of a vessel, present the intention, is an equipment forbidden by the act. If the words are "flexible," and I thank my learned friend, Mr. Mellish, for the word, it is a very just word to be used; I should say that if, looking at the meaning of the word as it occurs in the seventh and in the eighth sections, and treating it as flexible, if there be any doubt about it, the only way of explaining it is to regard the policy of the act itself. Now, has any reasonable policy been suggested other than that which has been stated on our side already, namely, that the policy of the act was to prevent this country from being made a station of hostilities? I am quite aware that it is suggested as a policy of the act to prevent what Sir Hugh Cairns calls proximate acts of hostility; but as to that being the sole policy of the act, is there anything in the act, or in the history of the act, or in pre-existing events which confines it to that policy? Of course the larger the policy the better for the argument for the Crown; but I ask, is there anything whatever in the act which excludes the notion of its being so applied as to prevent our soil from being made a station for hostilities?

Mr. BARON FIGOTT. You mean the starting point?

Mr. JONES. Call it what you will; I call it the cradle for hostilities.

LORD CHIEF BARON. Call it what it is.

Mr. JONES. Allow me to ask whether it was not intended to prohibit this country from being made the cradle of a naval armament, for such it would be if you allow a ship to be formed. I apprehend that if the object of the act be to prevent any ship being built or made here on our soil, I will not say being made or built here alone; but I say, if the object and the policy of the act be to prevent our country from being made the fulcrum, if you will, or, if I may revert to my illustration, a cradle, in which you may lay the infant navy; unless, I say, you can reasonably show that the purpose of the act is something else, or unless you can advance something to show that the object of the act is not such; unless you can furnish a better argument than seems to have been advanced, or unless you can find some fault in the argument, that the most reasonable construction from all history and from the language of the act, not forgetting the preamble, is to prevent that which will be the cause of irritation to belligerent nations—

Mr. BARON CHANNELL. Not "will be;" it is a very important observation: it is "may be."

Mr. JONES. What is likely to be, that is. I say, unless you can destroy—and this is

really the pinch of the matter—unless you can suppose some policy to be in the contemplation of the legislature other than that which we assign to it, namely, that the object of the act was to prevent that irritation which not only may be, but which we know is, and which, appealing even to contemporaneous events, we see is the cause of irritation, and which, if you were to go back to the history of the times in which this act was passed, was known to be the cause of irritation; unless, I say, you can destroy that argument, and the probability and the presumption arising from the language of the preamble, and arising from the provisions of the act, and arising from what I venture to call the antecedent probability, what is there to affect the argument arising out of this policy? The act must have had some policy; that policy, so far as it is possible to glean it from the words of the act itself, is consistent with the policy which I assign to it; for may it not, and does not the lending of the use of the soil by a neutral to one of two belligerents (to use the language of the act) “tend to endanger the peace and welfare of this kingdom” by annoying the other belligerent? Would it not tend “to endanger the peace and welfare of this kingdom” if all the yards of Liverpool and Hull, and of all the other great naval towns, were avowedly employed in building vessels not intended to be armed in this country, but merely to be made into sailing vessels to be armed elsewhere, and when armed to be employed in war by the confederates? Allow, for the purpose of the argument, that it is avowed that the contracts between the confederates and the builders in Liverpool, in Hull, and elsewhere, are printed in letters as large as can be employed, and suppose that you know that there are constructing a hundred, or as many vessels as you can choose to suppose, is that a thing not calculated “to endanger the peace and welfare of this kingdom?”

MR. BARON BRAMWELL. Do you read the act of Parliament with this sort of preamble, Mr. Jones: Whereas certain practices are likely to endanger the peace and welfare of this kingdom by causing foreign nations to make a complaint where by the law of nations they have no right to make a complaint?

MR. JONES. Where by the comity of nations they have such right.

MR. BARON BRAMWELL. It is a very dangerous topic, with great respect to you, because although the policy of the act may have been to prohibit something which no foreign nation had a right to complain of—because foreign nations are not always reasonable, and therefore it was as well to give them no cause, whether reasonable or unreasonable—yet it is obvious that the policy of the act was to prohibit it in cases where foreign nations had a right to complain; and you then go into questions of international law which I thought the attorney general threw over.

MR. JONES. International law does not affect my view of the matter. I say the policy of the act was to avoid irritation, and to enable the Crown to observe the comity of nations.

MR. BARON BRAMWELL. I thought the learned attorney general had gone a long way to show that the reliance placed upon international law upon the other side was an ill-founded one.

MR. JONES. What I am saying is in perfect keeping with the observations which the attorney general made, that you are to look at things practically. Now I ask your lordships whether it is or is not probable that irritation and annoyance are caused by allowing our ports to be turned into ship-yards for the construction of ships for the confederates? The question is answered by events. You know that it is, and independently of facts, it is surely impossible not to feel that whatever tends to make a belligerent nation look upon us as if we were acting a neutrality merely, not being really neutral, which disposes it to look upon us as only pretended neutrals, must be a source of irritation and annoyance to that nation. If you were to suppose that we have not those great advantages of constitution which we have, if you were to suppose the Crown to be despotic for the moment, there would be no doubt whatever that a belligerent might reasonably complain of a neutral nation allowing all its yards to be used for the purpose of calling into existence vessels which were intended and avowed to be intended to be used against the other belligerent. Nobody would doubt that such conduct would be a breach of comity on the part of the despotic neutral. It is because we possess a constitution which forbids the Crown, except under conditions, to do what a despotic monarch may always do, that this act of Parliament is passed, and was necessary to be passed, in order that by means of it the Crown may be enabled to observe and compel its subjects to observe the comity of the nations. I submit to your lordships that, assuming it to be necessary to resort to the consideration of policy, your lordships will not forget that at least nine-tenths of what has been addressed to your lordships in this case has been to enable you to see that the policy of the act is something different from that which might reasonably be supposed to arise from the language here employed. I ask your lordships if your lordships are satisfied with the argument which has been advanced to you; whether, with that knowledge, and with that narrative of events which has been laid before you, you are satisfied that the policy, and the true policy, of this act, was not to enable the Crown, at its pleasure, to forbid any act which by concession was intended to assist remotely a belligerent? I ask whether there is anything whatever in anything which has been advanced by the other

side, which your lordships can lay hold of, and from which your lordships can see that the policy of this act was not to prohibit that which would irritate, annoy, and vex a friendly nation, and that its object only was to prevent what is called, or what in abstract language is called, "proximate acts of hostility"—an expression which may have a great deal more sense in it than I can see.

If there be any force in the observations which I have addressed to you, your lordships will not fail to observe that this act would be frustrated if you were to allow any species of equipment, at all events amounting to that height of equipment which should make the vessel take the sea—that is to say, which would enable the vessel to be launched. It is not necessary for my purpose to specify or to distinguish the particular amount of equipment which would be necessary, because I submit to your lordships that any equipment, granting the intention, would be sufficient. But surely, so far as this case is concerned, and so far as it is necessary to appeal to the construction of the act for the purposes of this question, your lordships will see you are relieved from difficulty on that point of the case, because in order to construe the act it would not be necessary to go further and give a more abstract definition to it than that an equipment such as would satisfy the words of the act would be such as would enable the vessel to take the sea. This vessel was launched.

Mr. BARON PIGOTT. Do you mean that after she leaves the builder's yard, then any equipment is within the terms of the act?

Mr. JONES. I say any equipment in the builder's yard which would enable her to be launched must be an equipment within the act; and still more, as my learned friend the attorney general reminds me, such an equipment as would enable her to leave the port.

Mr. BARON CHANNELL. You cannot, in construing an act of Parliament, leave out the words that are found there. We all agree that the statute was intended to strike at the attempt or endeavor. It must be an attempt or endeavor to do that which is the subject-matter of the possible prohibition. May it be read thus: if any person "shall, without the leave and license of her Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or shall commence or begin to equip, furnish, or fit out, or arm such ship?"

Mr. JONES. Yes, certainly, my lord, that is how I should venture to read it, because it would, in fact, facilitate the application of the word "attempt;" and I go along with many of the observations which I have heard concerning the attempt.

Now, my lords, I have put before your lordships two propositions. The first of these propositions is that equipment for the purpose of making the offense is only such equipment as is needed for the purposes of navigation, as distinguished from equipment for the purposes of war. My second proposition is that any equipment for the purposes of navigation is sufficient.

Now, my lords, with reference to another point, viz., the extent of the equipment, a point to which great attention was paid at the trial, and which my lord chief baron addressed himself to: I will divide that, if your lordships will allow me, into two parts. 1st, as to whether the vessel must be completed; and 2d, as to whether the vessel must be completed here, that is to say, in this United Kingdom. Now, my lords, it surely cannot be necessary to say much upon the question as to whether the vessel must be completed. The few observations which the attorney general made I should think disposed effectually of any difficulty arising on that head, because the act being expressly for the purpose of prevention, and the procedure under the act being by seizure, it would be an idle thing to say that you must wait until the vessel is actually completed. Moreover, if you are to wait till the completion, when is it completed? when will it be completed? That must always be a question of fact, and no reasonable construction of the act would say that it was intended to be raised by the act. Then, my lords, see this other difficulty: not only would the question of completion be associated with and have to be considered with reference to the other parts of the act, at least with those heads of argument which I have applied myself to, namely, as to the character of the armament and the extent of the equipment, but the difficulty would always arise which my learned friend Mr. Mellish seems to think there is nothing in, namely, the difficulty that if you are to wait until the vessel is equipped, of course, assuming the construction which I assign to the act to be the true one, you necessarily, I will not say evade, but you necessarily infringe and deny the act altogether; that is to say, you frustrate its application altogether; because if it be true that you are to wait until the vessel is completed, the vessel may go out side by side with another vessel loaded with arms, and be completed and armed after it has got out of the limits of the kingdom. When that is put as an evasion it is a fallacy. The way of putting it is not to put it as an evasion, or to inquire whether it is an evasion; but the way to put it is this: Is it possible to suppose, as a question of construction, that the act can have been so framed, or that you can put on the words of the act such a meaning as will enable a thing, so entirely in frustration of its intention, to be effected? It is an argument for the policy of the act not being such as is assigned to it by the other side when it is said that it may be successfully evaded.

Now, my lords, if it is necessary to wait until the vessel is completed, you may do everything which it is confessed when done is an evasion of the act. Mr. Mellish admits you may do this. He says not only may it be completed, but you may sail out (I do not know if those were his words, but that is what he means) with that ship side by side with another ship, and get your armament put on board where it suits you. Well, but if that is so, not only is the act a dead letter, but it must have been intended by the legislature to be a dead letter. And therefore it is that I say that the argument is addressed to the question of the construction of the act; it is making the act absolutely idle.

I now come to the question which the Lord Chief Baron has put, namely, the question of locality, a question which I apprehend is very easily disposed of. Now, as regards the question of locality, I admit that for the purpose of this act you must make out that the thing prohibited is done within the United Kingdom. I answer that in a word. The thing prohibited is any act of equipment. Is it not any act of equipment? Let them answer. The question of whether it is or it is not any act of equipment brings back the question to the preceding question.

MR. BARON CHANNELL. I did not understand that there was any doubt upon this point. If you are right in your former argument, that all that was done within this country would amount to an equipment, no question arises about where it is done.

MR. JONES. That is as regards the locality. I thought the Lord Chief Baron suggested to me at first the question of locality.

LORD CHIEF BARON. My object in presenting that was to prevent the intent from being supposed to have any peculiar weight more than any other ingredients. The learned attorney general put it yesterday to me, not for the purpose that was then under discussion, that to deny yourself is nothing, but to deny yourself with the intention of delay is. It is not the mere intent to delay; you may intend to delay as much as you like, but it must be coupled with the act which the act of Parliament pronounces, if done with that intent, to be impolitic. Some of the argument, I shall not specify which it was, seemed to think that the intent was everything and the act nothing.

MR. JONES. No, I do not say that.

LORD CHIEF BARON. The intent without the act is nothing, as the act without the intent is nothing, and the act and the intent are both of them nothing, unless the thing be done in a port in this country.

MR. JONES. Clearly so, my lord.

MR. ATTORNEY GENERAL. Done or intended to be done.

MR. JONES. That is the basis on which I have been addressing your lordships.

Now, my lords, what I have addressed to your lordships bears exclusively on the point of misdirection. Now, my lords, as I understand the view which at the trial was taken by my lord, it was that the equipment must be hostile, that is to say, it must be of a warlike character, and that the ship must be completed or intended to be completed here. I humbly submit that that view is one which requires reconsideration. I am quite sure that there were very few people in the world, who, at the time when the trial took place, would pronounce themselves to be fully competent to give an opinion upon that question. But I need not dwell upon any consideration of what occurred at the trial. The question here is, What is the opinion of the Lord Chief Baron and the rest of your lordships here now upon this most difficult, most abstruse, and most important question? In fact, I would rather prefer, if it could be so done, that your lordships should not consider the question as a mere question of misdirection, but consider the question as applied to the facts alone, for that is the only fair and reasonable way of doing it. It is idle to say that a learned judge is wrong in the sense of his being perversely wrong, or clearly wrong, when a mass of facts is thrown, as I may say, before the court with which the court has to deal, and which your lordships see a week of argumentation is necessary to illustrate; it is utterly impossible. If any learned judge could deal with it, I am quite sure it would be the Lord Chief Baron; and I am persuaded that very likely the learned attorney general, when he addressed himself to this question, drew, or intended to draw, upon the great experience, upon the great knowledge, and upon the breadth of view which my lord is known to possess, and which it is his custom to apply to cases of very great importance, of which we have many instances in this court. My lords, the question is not a mere question of misdirection. The question is a question of the application of the law to the facts, a great question, and a very important one, and a question which must be decided by reference to very general considerations, and not merely to the question of what occurred in this particular case. The question ought to be looked at as if my lord had reserved the facts for the consideration of the court, it being utterly and absolutely impossible to deal with questions of this kind at *nisi prius*. The question is the same, I say, as if my lord had reserved it for the consideration of the court, and I am happy to know that, whatever may be the end of this case, it has led to a great amendment of the practice of the court, which I believe is mainly due to the Lord Chief Baron, for I believe to his lordship is due the suggestion of so providing that

future cases may be canvassed before the highest tribunal; so that not only this case, but any case of like importance, may be brought under the consideration of the House of Lords. The public are indebted to your lordships for having made the rule which has had that effect.

LORD CHIEF BARON. I have no doubt that the discussion which has taken place upon this motion for a new trial has been far more advantageous to the thorough understanding of the thing, and that we have been able to get to the very last point of whatever can be argued far more advantageously by a general discussion, than by argument upon the narrow ground which alone could have been presented in a bill of exceptions.

MR. ATTORNEY GENERAL. No doubt your lordship is quite right.

MR. JONES. And for that I think the attorney general has already intimated that he is very thankful to your lordships.

LORD CHIEF BARON. He need not thank me for it, because I hold that a grievous injustice would be done to me by any one who supposed that my resistance to the bill of exceptions was in the least degree disadvantageous to the Crown. I intended to present the alternative, that it would be better to move for a new trial, and take all the points, as you would get your appeal just as well.

MR. JONES. Your lordship is so well able to vindicate yourself, that I need not say a word in support of what your lordship has said; but I may point out that your lordship has originated the course of proceeding by which either party, dissatisfied with the judgment of this court, will be enabled to carry his case to the House of Lords, which could not have been done before the rule made by your lordship a few days ago.

Now, my lords, having regard to the full extent to which this discussion has gone, I believe I have occupied your time more than I ought to have done. But perhaps I may be allowed just to offer a word or two on those American cases, and it shall be only a word or two.

MR. BARON BRAMWELL. What about Quincy's case?

MR. JONES. The case of the United States *vs.* Quincy I regard as an authority for the position which I understand to be conceded by the other side, viz, that the ship need not be armed.

Now, as to the case of the *Independencia*, allow me here to observe that I really think there is no necessity whatever for making any extended observations upon that case. That case asserts this, that where that is not present which is here present, there is no offense, for the ground of the argument in the case of the *Independencia* is, that where there is no intention to employ the vessel except such as may be hindered by a contingency, there is, in fact, no direct or immediate intention to offend against the act, the act is not violated by an equipment, or even by an arming. This case amounts to nothing. It is argued, indeed, that because the act has not provided for such a case as the case before the court in the *Independencia*, therefore the act ought to have no operation in those cases for which it has provided. So far, therefore, as the cases of the *Santissima Trinidad* and the United States *vs.* Quincy are concerned, I do not think that I need trouble your lordships with any further observations. I submit to your lordships that there exists in this case that combination of the elements of equipment and intention which constitutes the offense. I trust we have demonstrated that there is that combination, and if there be that combination, it is a combination which is prohibited, and the statute has been violated, so as to entitle the Crown to the ship.

LORD CHIEF BARON. The court will take time to consider its judgment.

IN THE COURT OF EXCHEQUER AT WESTMINSTER—HILARY TERM, 27TH VICTORIA.

Present: The Right Hon. the Lord Chief Baron Pollock, Mr. Baron Bramwell, Mr. Baron Channell, Mr. Baron Pigott.

THE ATTORNEY GENERAL *v.* SILLEM AND OTHERS, claiming the vessel *Alexandra*.

Judgment on motion to make rule nisi for new trial absolute.

MONDAY, January 11, 1864.

LORD CHIEF BARON. This was an information against the ship *Alexandra*, charging that the defendants, with others, had been guilty of a violation of the foreign enlistment act in respect of that vessel. The ship *Alexandra* had been built and partly rigged at Liverpool, and had been seized on the 6th of April by an officer of the customs, on the ground of a breach of the seventh section of the statute. The defendants claimed the ship, and pleaded that the ship was not forfeited. The information charged

them with every possible violation of the act as to *equipping, furnishing, and fitting out*, but omitted to charge anything in respect of *arming*. The cause was tried before me on Monday the 22d of June, and three following days. The evidence for the Crown clearly established the warlike character of the vessel—it was not at all adapted for commerce, but was capable of being adapted for warlike purposes—and though it might have been used as a yacht, according to the evidence of Captain Inglesfield, it was in all probability intended to be used by the so-called Confederate States as a vessel of war, when adapted for that purpose by *them*, (suitable equipments and fittings-up being furnished.) And if the making, in pursuance of an agreement or order for that purpose, with intention to sell and deliver to one of the belligerents the hull of a vessel *suitable for war, but unarmed, and not equipped, furnished, or fitted out with anything which enabled her to cruise or to commit hostilities, or to do any warlike act whatever*, be a violation of the foreign enlistment act, my direction to the jury was wrong in point of law; the verdict ought to have been for the Crown, and there ought to be a new trial; but if the commerce of this country in ships, whether ultimately for peace or war, is to continue, and provided a ship leaves the ports of this country in no condition to *cruise or to commit hostilities*, though she may be of a warlike character, there has been no violation of the statute, then the verdict was right. And in substance this is the question between the Crown and the defendants, stripped of all technicalities.

The condition in which the vessel (unfinished when she was seized) was intended to leave this country was, perhaps, not perfectly clear, but there was no direct evidence that she was to be made, at Liverpool, or in any other British port, fit to cruise or to commit hostilities. I told the jury, in substance, that the sale of a ship was, in my judgment, perfectly lawful, even of a ship so constructed as to be convertible into a ship of war; that the sale of arms and ammunition and every kind of warlike implement was not forbidden by any law, either international or municipal, and that I thought that a ship capable of being used for war might be made and sold, as well as sold, (if made,) provided she did not leave a port of this country either armed or equipped, or furnished or fitted out within the meaning of the statute; that is to say, with intent or in order to cruise or commit hostilities against a state or power with whom her Majesty was not at war.

There was no direct evidence that the vessel was intended to be armed at any British port with intent on the part of any of the defendants, or indeed of any one, to cruise or commit hostilities, indeed there was no charge in the information on the subject of *arming* at all, and there was no direct evidence of any intention to equip, furnish, or fit out the ship with intent to cruise or commit hostilities according to what I think is the true meaning of the charge in the information. I, however, left the question to the jury in the terms of the act of Parliament, and upon this direction, with the evidence before them, the jury found a verdict for the defendants.

In Michaelmas term the attorney general applied for a new trial, and obtained a rule to show cause, on the ground stated in the rule, why the verdict should not be set aside and a new trial had. Cause was shown during the term, and the argument lasted six days. We have now to deliver the judgment of the different members of the court.

It is material, I think, first to call attention to the various charges contained in the information, which consists of ninety-eight counts. The ninety-seventh and ninety-eighth counts relate to an intent to employ the ship as a transport or store-ship, as well as to commit hostilities. These counts were given up at the trial by the then attorney general. The remaining ninety-six counts consist of the first eight counts repeated twelve times, merely varying the offense charged. The first eight counts charge that the defendants did *equip*, the next that they did *furnish*, the next that they did *fit out*, and so on. Then all the varieties of *attempting, procuring, aiding, &c.*, are introduced, making the total eight times twelve or ninety-six counts. The attorney general at the trial said, "The first eight counts are those only to which any attention need be paid," not meaning to abandon the rest, but intimating that the first eight represented all the rest. I propose to state in substance what those eight counts are.

The first count charges that the defendants, without the leave, &c., did equip the vessel with intent and in order that such ship or vessel should be employed in the service of the Confederate States with intent to cruise and commit hostilities against a certain foreign state with which her Majesty was not then at war, to wit, the republic of the United States. The second count resembles the first, but charges that hostilities were to be committed against the *citizens* of the foreign state. The third count charges that the defendants did equip, with intent to cruise and commit hostilities against a foreign state with which her Majesty was not then at war. The fourth count is similar to the third, varying the description of the parties against whom hostilities were to be committed. The fifth, sixth, seventh, and eight counts are similar to the first and second, varying only the description in the first and second counts of the belligerent parties who were affected by the conduct of the defendants. The charge, therefore, resolves itself into a charge of equipping, &c., with a certain intent, the intent being stated in two different ways, or a charge of attempting, endeavoring, &c., to equip, or procuring to be equipped, with the same two intents in different counts. If what was

intended to be done would not, when done, amount to an equipping, &c., within the act, then there would be no attempting or endeavoring, &c., contrary to the act.

The question then arises what is the true construction of the foreign enlistment act, particularly of the seventh section of that statute, upon which the information in this case is framed; and what is the meaning of the words "equip, furnish, or fit out" in that section; and also what is meant by the expression, "with intent to cruise or commit hostilities."

It is a highly penal statute, creating a new crime or misdemeanor, making those who commit it liable to fine and imprisonment, if found guilty, and the ship, the subject of of the crime, liable to forfeiture. The attempt or endeavor to commit the offense, or the procuring it to be committed, or the aiding, assisting, or being concerned in the commission of it, is each made criminal, and liable to the same punishment and forfeiture.

In order to have a comprehensive view of the whole subject, it may be useful to become acquainted with the history of the statute and of the act of the American Congress, which is said to have given rise to it. It may be useful also to learn what have been the opinions (differing, it may be observed, widely from each other) of learned jurists and of eminent statesmen, not always agreeing, on the subjects of international law, belligerent rights, and neutral duties. But none of these can furnish even the semblance of authority for construing an English act of Parliament, which creates for the first time an indictable offense, rendering the party found guilty of it liable to fine and imprisonment, and his property liable to forfeiture; and it should be borne in mind that the property is not forfeited unless the crime has been committed. I, perhaps, may here remark that neither on the trial nor during the argument has any one suggested by name who has committed the crime, what he did in committing the crime, or what are the acts and who are the persons by whose conduct a ship of the value of the *Alexandra* has become forfeited and seized by the Crown. If the statute in terms reasonably plain and clear makes what the defendants have done a punishable offense within the statute, we want not the assistance which may be derived from what eminent statesmen have said, or learned jurists have written on international law or belligerent rights; we want not the decisions of American courts to see whether the case before us is within the statute; but no opinions of jurists, no decisions of foreign courts will enable us, or ought to induce us, to declare if the act be not within the words of the statute that the scope and object, the spirit and intention of the statute include the case before us, though it be not plainly and clearly expressed by the legislature. We have had in this country no court of criminal equity since the Star Chamber was abolished, as Lord Campbell called it, in a case which was tried before him, viz., "*The Emperor of Austria vs. Day*," which is to be found in the 30th Law Journal, (Chancery, 706.)

Mr. Justice Blackstone well lays down the rule in the first volume of his *Commentaries*, page 92—"The freedom of our constitution will not permit that in criminal cases a power should be lodged in any judge to construe the law otherwise than according to the letter." Our institutions were never more safe in my opinion than at the present moment, but we cannot afford at any time to lose any of the grounds of our security, and no calamity would be greater than to introduce a lax or elastic interpretation of a criminal statute to serve a special but a temporary purpose. And here I may notice, in order to dispose of it, the argument of the attorney general, about construing a statute, even a penal statute, so as to suppress the mischief and advance the remedy. He cited Plowden and the resolutions in *Heydon's case*, 3d Reports, page 18. But all the penal statutes alluded to there, and in all the places where that doctrine is to be met with, are statutes which create some disability or forfeiture, none of them are statutes creating a crime, and I think it is altogether a mistake to apply the resolutions in *Heydon's case* to a criminal statute which creates a new offense.

The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is: What is the true construction of a statute? If I were asked whether there be any difference left between a criminal statute and any other statute not creating a crime, I should say that in a criminal statute you must be quite sure that the offense charged is within the letter of the law. No doubt there are some other cases to which the statute is to be applied, unless you are quite sure of the contrary, namely, that the case is not within the law.

As to this particular statute having for its object *prevention*, and not *punishment*, which was pressed upon our attention more than once, that is not a matter peculiar to this statute. I apprehend that this statute has that object in common with all other criminal statutes that were ever passed, which are all intended not to punish guilt, but to prevent crime. And as to the recital that the existing law was not sufficient, to which our attention was particularly called, I presume that that recital really belongs also to every statute of every sort, whether mentioned in it or not; for if the law be sufficient, the statute is a piece of superfluous legislation.

So also I think that we have nothing to do with the political consequences of our decision, or the dissatisfaction which it may create in any quarter anywhere; and I

cannot help expressing my regret, not unmixed with some surprise, that the learned attorney general has more than once adverted to the consequences that may arise from our holding that what the defendants have done is not contrary to our municipal law. That it is not contrary to the law of nations he has distinctly stated, and indeed made it the subject of an argument, (*in another place, as I think they call it*), "that other countries have no right to complain of it as a violation of the law of nations." On the first day of his argument he pointed out how the supply of ships would work practically between a powerful country and a weak one, and he imagined (I am quoting his very words) "this country at war with France, and the dock-yards in Sweden supplying, fitting out, and equipping vessels of war for France;" and he suggested that we might say, as he says we always have done in the course of our history, "We will not endure it; and if this goes on we will rather go to war with you than let war be carried on practically against us from your shores, under pretence of neutrality. That we should do that with a weak power like Sweden," the attorney general asks, "can any human being entertain a doubt?" He then goes on to suggest that a great power, like the United States, would adopt the same views, would look broadly at the practical mischief, would care nothing for Vattel, Grotius, or Puffendorf, and would say, "It is in substance as noxious as war, and we will not endure it."

I must say I doubt whether such views and such doctrines ought to be presented to us at all. I am sure that they will not influence our judgment, and I am inclined to suspect the soundness of any proposition of law which requires such a style of argument to support it. Indeed, I may add that international law would be of very little use if it were not to govern the conduct of *strong* nations as well as of *weak* ones. I would rather state the passage in the attorney general's own words, because I should be very sorry to misunderstand or to misquote anything that fell from him. He says: "Can any one doubt that that is the way in which such a state of things would work practically as between a powerful country and a weak one?" Then he imagines the case of Sweden, and then he says: "That we should do that with a weak power, like Sweden, can any human being entertain a doubt?" I venture to entertain a doubt and to express a hope that this country would not sully its high character by adopting toward a weak state a line of conduct which it would not think prudent or politic toward a stronger one. I certainly had thought that the object of international law was, among other things, to state and define what acts, what conduct of any state would justify war being made upon it by another state. But the attorney general seems to think that if one nation be strong and another weak, the strong one will make war on the weak, though it has no violation of international law to allege against it and to complain of, but merely some inconvenience arising from the neutral state continuing its commercial relations with another power, with whom it has been accustomed for a long time to maintain them.

Again, on the second day the attorney general said: "The peace and welfare of the kingdom, perhaps of the world, is declared by the legislature to depend" upon this matter. When his attention was called to this from the bench, he said that perhaps he was going too far in saying "the peace of the world," and no doubt he was, for there is no declaration by the legislature about "*the peace of the world*" at all, and the expression "peace and welfare of this kingdom," which no doubt is in the preamble, I believe relates, as far as "peace" is concerned, only to that tranquillity which is in the care of the magistracy, and has nothing whatever to do with the relations of peace or war with respect to other countries.

At the end of his address (no doubt conspicuous for its ability) he stated the grounds on which our decision ought to rest, in a manner perfectly unexceptionable; and I wish that the whole of his argument had corresponded with the dignified and eloquent manner in which it was concluded.

So also I think we have nothing to do with the question as to which construction of the clause is most for the interest of this country as a great maritime power. It is degrading the discussion to make it in any degree turn upon a question of advantage or benefit to be gained or lost; and on such a subject we might turn out to be quite mistaken. In the present enlightened state of the civilized world, it may turn out that that doctrine and those principles are to be preferred which would make us prosperous in peace rather than those which would make us successful in war.

In construing the statute it is our duty to ascertain the true legal meaning of the words used by the legislature, and to collect the intention from the language of the statute itself, either the preamble or the enactments, and not to make out the intention from some other sources of information, and then construe the words of the statute so as to meet the assumed intention; and this appears to me to be the mistake of the counsel on the part of the Crown. They say, here is a powerful State complaining that what you are doing is as bad as war; and saying we will not endure it; and then they say, the welfare and peace of this country require that the act should be so construed as to silence that complaint. But we cannot and ought not, even if the matter before us seemed to be within the mischief which it is supposed the statute was meant to remedy, to deal with it as a crime unless it be plainly and without doubt included in

the language used by the legislature. In my judgment it is not within the letter of the statute, nor within the spirit, nor was it at all contemplated by those who framed the law.

The danger of traveling out of the statute itself and looking elsewhere for the object of the legislature in passing it, may be illustrated by the wide difference of opinion between the late attorney general and the present attorney general upon this very point. The late attorney general in opening the case to the jury said—"It appears particularly to have been contemplated by the framers of the foreign enlistment act to enforce the observance of neutrality in the event of war," which I certainly understand to mean, to compel a compliance with the duties of neutrality, as expounded by international law. But the present attorney general, in the beginning of his argument in support of the rule, took quite an opposite view, but I own I think a much more correct one, and said that the whole argument of his speech (in that other place which has been alluded to) was to establish "the directly contradictory proposition," and his language is this: "I say that there were no such obligations, and that it is a total misinterpretation of the municipal law to say that there was any state in the world which, according to the settled and established principles of international law, could have required this country to prohibit those things which were prohibited under that statute," meaning the foreign enlistment act. And even with respect to the Alabama, he intimates that though there had been a breach of the municipal law, there had been (and I think he is quite correct in this) no violation of international law, or anything of which a belligerent at peace with this country had a right to complain.

In endeavoring to discover the true construction of the seventh clause of the statute, the first matter to be attended to is no doubt the actual language of the clause itself as introduced by the preamble; 2dly, the words or expressions which obviously are by design omitted; and, 3dly, the connection of the seventh clause with other clauses in the same statute, and the conclusions which on comparison with other clauses may reasonably and obviously be drawn. I do not mean to exclude other considerations, but these appear to me to be the most obvious and the safest.

The learned attorney general, with apparent effect, asked, Why do you try to explain a statute by words which are not to be found in it? it is dangerous to adopt such a course. On the first impression the objection seems not at all unreasonable; but the answer, on a very little consideration, is quite obvious. In order to know what a statute *does* mean, it is one important step to know what it *does not* mean; and if it be quite clear that there is something which it *does not* mean, then that which is suggested or supposed to be what it *does* mean, must be consistent and in harmony with what it is clear that it *does not* mean. What it *forbids* must be consistent with what it *permits*. The seventh section contains the words "equip, furnish, fit out, and arm," but does not contain the word "build," and I think no one can doubt that that word was purposely omitted from the act of Congress and from our own statute.

I am not surprised that the attorney general was desirous of preventing this mode of investigation, because it leads in my judgment irresistibly to this conclusion, that whatever might be done in the way of mere building before the statute, may now be done notwithstanding the statute. In common honesty and candor it cannot be suggested that the legislature meant to suppress the mere building of ships for a belligerent, (as it were by a side wind,) and to suppress their trade without exciting their alarm. I think, therefore, I may pronounce with confidence that it is lawful now to build ships, and even to build ships for war. The ship-builders of this country for above a century have built ships for almost every nation on the earth, some for warlike purposes, and some for commercial. Ship-building is one of the most considerable of our industrial and commercial pursuits. Building ships is not prohibited, even building ships for war is not prohibited, provided they be not "*equipped, furnished, fitted out, or armed,*" in our *ports*, with either of the intents stated in the seventh section, and the words "*equip, furnish, fit out, or arm*" with the *intent stated in the seventh section* ought to be construed (if they can be so construed) so as to leave the commercial interest of ship-builders untouched. If the comparison of the seventh section with other sections in the act makes a certain proposition clear and undoubted, the act must be construed accordingly and ought to be so construed as to make it a consistent and harmonious whole. If after all it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail. I cannot understand how in the same breath it can be admitted that the question is far from being free from difficulty, and yet a construction is called for to create a crime and embarrass an important branch of British industry.

A comparison of the seventh section with the second leads me to a conclusion quite different from that at which the learned attorney general arrived. With respect to the second section, it did not escape him that the offense created by the second section is in a natural-born British subject an offense everywhere, in the realm or out of it. To use his own expression, "the net is thrown as wide as the entire world," and enlistment anywhere is the matter forbidden. Not so the seventh section; the acts forbidden by the seventh section are forbidden to her Majesty's subjects in her Majesty's dominions

only, elsewhere they are no offense at all; and the attorney general failed to draw the conclusion which to my mind is irresistible, namely, that neither the act nor the intention is so much the object of the legislation as the *place*; it is the place (a British port here or abroad) which is made sacred. Let the ship-builder, though a British subject, take his capital and materials elsewhere, and he may build what ship he pleases, and arm it and equip it as he likes, for the use of any belligerent not at war with this country; and with whatever intention he is actuated, if he commits no act of hostility, he neither violates international law nor commits any breach of the foreign enlistment act. The great object of the statute, therefore, was not to prevent the building of ships by British ship-builders for one of two belligerents, with neither of whom we were at war, but to preserve the ports of this country from being made ports of hostile equipment against a friendly belligerent; it was not in any way to fetter the commerce of this country or the trade of ship-building beyond what was necessary for that purpose.

If it were important to prevent ships from being equipped, furnished, fitted out, or armed with the intents mentioned in the seventh section, by British subjects, it might have been made the subject of universal prohibition, as far as British subjects were concerned, as easily as enlistment, but the prohibition does not go beyond the ports of the British dominions.

Again, a comparison between the seventh section and the eighth throws also some light on the meaning of the words used in the seventh section, and on the object with which it was framed. The eighth section of the British statute makes it a misdemeanor to add to the number of guns or to change them for others, or by the addition of any equipment for war to increase the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which at the time of her arrival in any port of the United Kingdom was in the service of any foreign prince or government, or of any person or persons exercising or assuming to exercise any powers of government. In short it forbids any one in this country to increase the warlike force of any vessel of war or armed vessel not belonging to the sovereign of this country. In this it differs from the corresponding clause in the act of Congress (which is the fifth) which forbids the increase of warlike armament to a ship of war only when it is for a state at war with a state or people with whom the United States are at peace. But in this country the increase of the warlike armament of any foreign ship of war is not permitted at all. Whether it belongs to a state at peace or at war with those with whom we are not at war, is no question; our ports are not to be disturbed by a warlike armament at all. But then everything or anything else may be done for the purpose of mere navigation; any sea damage to the ship or tackle may be repaired. If a vessel be capable of repair, she may be equipped, furnished, and fitted out; if a steamer, she may be supplied with coals, in order that she may reach a port of her own country in safety. One conclusion clearly to be drawn from this is, that whereas in the United States foreign vessels, vessels of war, of one belligerent were not allowed to increase their warlike force if the United States were at peace with the other belligerent, in the British dominions a foreign vessel of war is not allowed to increase its warlike force at all under any circumstances. The one may be ascribed to some doctrine of neutrality; the other to a wish to preserve the peace of the British ports, and not to allow them to be made places of warlike equipment for foreign vessels at all.

But there is another result more worthy of observation. It is, I presume, conceded that a federal vessel of war, damaged by storm, may put into an English port, and may refit and repair so far as is necessary to make it again navigable in order to reach its own country. The eighth section of the statute by implication permits all that it does not forbid. A federal vessel of war coming into our ports would be allowed no doubt to repair sea damage and to supply lost stores, in order to reach some other port; but the ship-builder in our port would be equipping, furnishing, and fitting out that vessel knowing that the commander might cruise and commit hostilities against the so-called Confederate States. But does the ship-builder commit a misdemeanor? Certainly not. Or is the vessel forfeited? Certainly not. If the argument for the prosecution be well founded, and the construction of the statute by the counsel for the Crown be correct, the ship-builder who repaired any damage to a vessel of war belonging to either of the belligerents would be liable to a prosecution as much as any of the present defendants.

I now come to the seventh section itself, and to the terms in which the statute enacts that persons doing certain acts with a certain intent shall be deemed guilty of a misdemeanor. It is necessary carefully to separate the act itself from any attempt or endeavor to commit it, and to simplify the inquiry as to how the statute should be construed. I will take, as the information does, one of the prohibited matters, "equip," for instance, and examine that alone, without reference to the others, and without reference to attempting, procuring, aiding, assisting, &c. The clause would then run thus: "If any person within any part of her Majesty's dominions, in the United Kingdom or beyond the seas, without the leave and license of her Majesty, shall equip any ship or vessel with intent, or in order that such ship or vessel shall be employed in the service of any foreign state or government as a transport or store-ship, or with intent

to cruise or commit hostilities against any state or government with whom her Majesty shall not then be at war, every such person so offending shall be deemed guilty of a misdemeanor." Two questions obviously arise upon the construction of these expressions: 1st, Whose intention is it which is meant by the act; and, 2dly, What is the meaning of the word "*equip*?" It is difficult to make out what was the intention of those who framed this clause, as to the manner in which it should be broken up into parts, and then be put together so as to present all the alternatives contemplated. Probably, I think one may say certainly, it could not mean that "with intent and in order that such ship or vessel should be employed in the service of any foreign prince, state," &c., "as a transport or store-ship," should stand alone without some subsequent matter being added, for that would make it a misdemeanor to furnish a transport or store-ship to any foreign prince, &c., without any regard to his being at peace or war with any state or government with whom the sovereign of this country should not then be at war.

It is probable that the words "against any foreign prince, state," &c., should follow the word "store-ship;" and then the effect of the clause would be to make it a misdemeanor to equip a ship or vessel as a store-ship with intent and in order that such ship should be employed in the service of any foreign prince, &c., as a transport or store-ship against any prince, state, &c., with whom our sovereign should not then be at war, or *with intent* to cruise and commit hostilities against any such prince, state, or potentate; and some twenty-four of the ninety-eight counts are founded upon this view of the section. Or the alternative may be, "as a transport or store-ship, or with intent to cruise or commit hostilities," &c.; and then the effect of the clause would be to make it a misdemeanor to equip a ship with intent or in order that she might be employed by one belligerent as a transport or with intent to cruise or commit hostilities against the other.

It is certainly to be regretted that the wisdom and sagacity which the attorney general discovers in adjusting the verbal differences between our statute and the prior act of Congress were not exercised in baffling the enemy of the bill, who, by leveling it at transports and store-ships, as well as ships of actual war, has thrown the whole clause into great confusion, which I presume it is suggested that he meant to do by speaking of him as "not originally a friend to the bill," and as having made the alteration "in committee." But neither this court nor any other court can construe any statute, and least of all a criminal statute, by what counsel are pleased to suggest were alterations made in committee by a member of Parliament, who was "no friend to the bill," even though the journals of the House should give no sanction to the proposition. This is not one of the modes of discovering the meaning of an act of Parliament recommended by Plowden, or sanctioned by Lord Coke or Blackstone. Where two intents are mentioned, and they are put in the alternative, thus, an intent to do such a thing, or an intent to do another, the obvious and the grammatical mode of reading the clause would be to make the two intentions the alternatives; but most of the counts in the information (about seventy-two) combine the two intents together, and in effect turn "or" into "and," and charge the defendants with "equipping," &c., the ship, with intent that the ship should be employed in the service of one belligerent with intent to cruise and commit hostilities against the other belligerent, with which her Majesty was not then at war. If this mode of reading the seventh section be not correct, seventy-two of the counts are improperly framed, and the statute does not warrant their making any such charge. But, assuming it to be correct, then the question arises whose intent does the information mean? Who is it that the information charges with an intent to cruise and commit hostilities? According to all the rules of pleading, it must be the intent of the person committing the act; and this view would make all the counts in substance to mean much the same thing; that is to say, with reference to the intent. There was no direct evidence that the persons "equipping, fitting out," &c., or "aiding, assisting," &c., "in equipping," &c., had any intention to cruise or commit hostilities at all; and, if so, the whole charge would fail altogether. The attorney general would read, "with intent to commit hostilities," as if the expression were, *with intent that hostilities should be committed by somebody*; but that mode of reading the expression is contrary to the rules of pleading and to all authority on the subject; and especially it seems to me to be contrary to what was decided in *The United States vs. Quincy*, of which a full report is given in the appendix to the trial. I wish to call particular attention to this case, and to the two answers of Mr. Jefferson, referred to by the solicitor general in the course of his argument. I think that those answers lead to a construction quite different from that suggested by the counsel for the Crown. Mr. Jefferson's answers clearly show what was the opinion of the American government; and the decision of the Supreme Court, in *The United States vs. Quincy*, is the best authority as to the state of the law. The first answer refers to arms and ammunition—not to ships at all. Mr. Jefferson says, "Our citizens have been always free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress those callings, (the only means, perhaps, of their subsistence,) because a war exists in foreign and

distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice."

Why, I would ask, should not this view of the subject of industrial pursuits apply to ships and ship-builders in England? In America it apparently does apply. The second answer relates to ships, but Mr. Jefferson does not say anything in disapprobation of a mere supply of ships, even ships of war. What he says is this: "But the practice of *commissioning*, equipping, and manning vessels in our ports to cruise on any of the belligerent parties is entirely disapproved, and the government will take effective measures to prevent it," and accordingly the third section of the act of Congress is directed against fitting out and arming, and also against commissioning. The seventh section of our act is directed against equipping, furnishing, fitting out, or arming, and also against commissioning. But there is not a single syllable against ship-building, or selling, or making for sale, ships, even of a warlike character. So with respect to the law and the construction of the American act of Congress. The judgment delivered by Mr. Justice Thompson in the United States, in the case of *The United States vs. Quincy*, gives to the citizens of the United States a right to send armed vessels out of their ports. It aims at preventing the citizens themselves from committing hostilities against foreign powers at peace with the United States, but leaves them at perfect liberty to sell the vessel to one of the belligerents, and provided hostilities are not committed by the citizens of the United States there is no breach of the law. The accompanying remark of the learned judge which immediately follows, proves that the attorney general is endeavoring to enforce against British ship-builders a principle which the Supreme Court of the United States altogether repudiates as applicable to citizens of the United States. If our statute was passed to give to the United States and other countries the same advantage that their act of Congress gave to us, there may be a reciprocity in words, but there is no reciprocity in reality and in construction if the argument for the prosecution is to prevail. Mr. Justice Thompson says, "All the latitude necessary for commercial purposes is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war," which I understand to mean, that the citizens of the United States have a right to build what ships they please, and dispose of them as they please, provided they do not themselves take part in the war, and the ships are not employed by them to commit hostilities. And what pretense is there for giving to our foreign enlistment act, with respect to ship-building, a construction totally different from that which the act of Congress bears, according to the judgment of the American judges themselves in their Supreme Court?

There is, indeed, a difference of expression between the act of Congress and our statute, they have merely the words "with intent," we have "with intent or in order."

The attorney general says that he supposes that the words "in order" were added to avoid some evasion or quibble. I believe that they were added to leave no doubt as to the meaning; the expression "in order" is explained in Todd's Johnson to signify "means to an end," and Jeremy Taylor, Tillotson, and Swift are quoted as authorities—the passage from Swift is, "One man pursues power in order to wealth"—that is, power is the "means," wealth is "the end." And the seventh section forbids equipping a ship or vessel as a "means" to "the end" of cruising, or committing hostilities. In all common sense and understanding, if the nature of the equipment has no reference whatever to the commission of hostilities, it cannot be the "means to that end," and there is no breach of the statute by that sort of equipment. Webster's American Dictionary gives precisely the same explanation of the words "in order." And this leads me to remark that even the word "intent" alone, and without "in order," which is put in, as I think, to explain it and give it the true meaning which an English lawyer would assign, ought not to lead to a different conclusion. The attorney general seems to think that if there be an intent, and if anything of whatever kind be done in pursuance of it, that is sufficient. With great respect for the opinion of so eminent a lawyer, in my judgment that is not sufficient. If a statute simply made it a felony to attempt to kill any human being or to conspire to do so, an attempt by means of witchcraft or a conspiracy to kill by means of charms and incantations would not be an offense within such a statute. The poverty of language compels one to say "an attempt to kill by means of witchcraft," but such an attempt is really no attempt at all to kill. It is true the sin or wickedness may be as great as an attempt or conspiracy by competent means; but human laws are made not to punish sin, but to prevent crime and mischief.

I am, therefore, of opinion, that the seventh section should be construed as if the words were "if any person," in the places mentioned, "shall, without the leave, &c., equip, as a means, any ship or vessel to the end that such ship shall cruise or commit hostilities;" and so read, if after all the equipping or furnishing or fitting out the ship is incapable of cruising or committing hostilities, there has been no such equipping, &c., as the statute was intended to prevent.

And this brings me to the meaning of the words "equip, furnish, fit out, and arm," for they must all be considered together; and the question is not so much what did the legislature mean, as what is the meaning of what they have said—of the words they

have used. A clause, admitted to be awkwardly framed, by no means free from difficulty and of considerable doubt, was scarcely worth the very minute criticism and comparison which it has received; but on the part of the prosecution it is contended that the seventh clause was meant to put ships constructed for war or adapted to war upon a footing different from any other munitions of war; to leave cannon of every description, arms of all sorts, gunpowder, and shot and shell, to be freely supplied to either belligerent, but that no ship or vessel of a warlike character in any respect was to be furnished to a belligerent with whom this country was not at war. If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it, instead of the awkward, difficult, and doubtful clause, which it is admitted on the part of the attorney and solicitor generals we have to deal with. It cannot be suggested that the object was to conceal from the ship-builders the ultimate effect of the clause, and to prevent a clamor on the part of the builders of ships, that they were interfered with in a way which the casters of cannon and the makers of gunpowder were not. There is not a syllable in the act of Parliament, nor in anything connected with it, nor in any contemporary proclamation, speech, or publication of any kind professing to put ships on a footing different from any other implement of war; and it was admitted most distinctly by the attorney general, and I think correctly enough, that there was no foundation for any such distinction in international law. But what is the ground of this distinction between cannon, ammunition, and other articles of that description, and ships? I think it was insisted upon entirely without any sufficient foundation. The attorney general says, as I understand him, that as far as international law is concerned, there is no distinction between them, and that the distinction arises from our municipal law. He entirely agrees with me upon the subject, except as far as the municipal law makes a difference. His expression is, "I entirely subscribe to what fell from the lord chief baron at the trial, that it could make no difference whether there was a sale of a thing ready made without a previous contract, or a delivery under a contract." No doubt, he says, that would be so if no legislation made a difference, and he considers that the foreign enlistment act made that difference, and his reason is a singular one. He says that her Majesty has the power whenever she pleases to prohibit every other species of contraband trade, but that she has no power to deal with a ship, so that ships are left out, to be dealt with under the foreign enlistment act. The present statute forbidding the exportation of arms, ammunition, and so on, is the 16th and 17th of Victoria, passed in 1853, founded on a statute, the 3d and 4th of William the fourth, chapter 52, passed in 1833. I cannot find in the index to the Statutes any earlier one. So that the construction of the foreign enlistment act, passed in 1819, is apparently made to turn upon an act passed in 1833.

The result of the argument on the part of the Crown seems to be this. A ship-builder may build a ship altogether of a warlike character, and may arm it completely with the latest and most mischievous invention for the destruction of human beings, and may then sell it to one of two belligerents, with a perfect fitness for immediate cruising, and ready to commit hostilities the instant it is beyond the boundary of neutral territory, provided there was no previous contract or agreement for it. But if there be any contract or agreement for it, it cannot be made to order with the slightest warlike character about it, though this be part of the accustomed and usual trade of this country, and though the ship leaves our shores a mere hull, utterly incapable of cruising or committing hostilities, and as far as war is concerned as innocent and harmless as the mere timber would be of which it is built. The means of evasion which this furnishes is obvious. A signal, a word, a gesture, may convey an order wholly incapable of being proved. It is unnecessary to dwell upon this; it is at once perfectly obvious; and the real difference between a crime and an act of commerce may, in point of evidence, entirely disappear. To use an expression borrowed from one familiar in Westminster Hall about a coach and six, a whole fleet of ships might sail through such an act of Parliament as this, if this be the meaning of it; and we are to believe that our legislators exhausted all their wisdom in settling the language of the seventh clause, and had none remaining to perceive the enormous loophole which they had left.

Again, a British subject may buy a vessel of war rejected by our navy, fit it up and arm it, and sail with it to a port of either belligerent to sell it; but if either belligerent should, by an agent, purchase it at a public sale by auction, he cannot put a mast into it, or hoist a sail to reach his own country; but an armed vessel of either belligerent may come into our ports and obtain whatever mere naval but not warlike stores she may require, so as to enable that ship to reach some other port. Observe, coming into a port completely armed, he may refit and repair; but being altogether unarmed, he cannot put up a mast or a sail merely to take that vessel across the ocean. I cannot believe that the sound construction of an act of Parliament passed within fifty years of the present time can by possibility lead to such an amount of inconsistency and absurdity, and I may add injustice, as is involved in the construction which we are asked with so much earnestness to put upon this statute. It seems to me to amount almost to that

degree of what is said to be repugnance to common sense which ought, according to the golden rule, to defeat the effect, even if the words conveyed the meaning, which they certainly do not.

In my judgment the act was not framed in order to make any difference between ships of war, and guns, ammunition, and other implements of war, but to prevent our shores from being made the points of departure of hostile expeditions *commissioned and equipped* to commit hostilities against a belligerent not at war with us. The seventh section, therefore, forbids the issuing or delivering a commission as well as equipping in order to commit hostilities; for without a commission any act of hostility would be a clear and undoubted act of piracy, and there was no occasion for a new law against piracy. To suppose that the legislature left to British ship-builders the power and right to *build* ships for war, as before the statute, but that they meant by the words "equip, furnish, and fit up," to forbid them from sailing away, however harmless and innocent of war their condition might be, is, I think, an unworthy imputation on the good faith of those who made the law. There can be no doubt they did not mean to permit a ship or vessel to go away *armed*, for they have said so distinctly; but "*arming*" admits of many degrees, and a doubt might arise, if the word "*arm*" alone had been used, what degree of arming would constitute the offense. But the degree is settled and determined by taking the whole sentence; the ship is not to be equipped, &c., in order to cruise or commit hostilities; if the equipment amounts to that the law is broken; if it does not, no offense has been committed.

With respect to the rule, I am of opinion that none of the grounds upon which it was moved ought to prevail, and that the rule ought to be discharged.

Mr. BARON BRAMWELL. The law that governs this case is a written law, an act of Parliament, which we must apply according to the true meaning of the *words* used in it. We must not extend it to anything not within the natural meaning of those words, but within the mischief or supposed mischief intended to be prevented, nor must we refuse to apply it to what is within that natural meaning, because not or supposed not to be within the mischief.

In this, as in other cases of doubtful meaning, it is legitimate to resolve that doubt by ascertaining the general scope and object of the enactment. And, accordingly, international law has been referred to, certain propositions have been laid down in that necessarily vague science, and it has been argued that the act was passed merely to enable the Crown to enforce the observance of that law by its subjects, and so it has been sought to find its meaning. But it is clear to me that the statute prohibits some things which are not, and I strongly incline to think permits some things that are, prohibited by international law. In the result, I concur with the learned attorney general, that the question which we have to answer cannot be solved by treating the statute as a mere enforcement of international law.

Again, it may be a legitimate mode of determining the meaning of a doubtful document to place those who have to expound it in the situation of those who made it; and so, perhaps, history may be referred to, to show what facts existed, bringing about a statute, and what matters influenced men's minds when it was made. But we know that in our legislation an argument may be used in support of the principle of a bill which is consistent with particular provisions of great variety; and we know that in all legislation where it is intended to prohibit a thing, it may be necessary to prohibit others, under color of doing which the thing intended to be prohibited may be done. This, therefore, affords no certain clue to the meaning of this enactment. Nor would ascertaining the objects of the authors of the American act, from the provisions of which in our act there is a purposed difference.

It becomes necessary then minutely to scrutinize the *words* of our statute, and interpret them with such assistance (if any) as can be got extra its four corners. Now it is no doubt a penal statute, but I think it ought to be construed as laid down by the late Mr. Sedgwick in his book on statutory and constitutional law. He says at page 328, "But the rule that statutes of this class are to be considered strictly, is far from being a rigid or unbending one; or rather, it has in modern times been so modified and explained away, as to mean little more than that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment; the courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other, equally refusing by any mere verbal nicety, forced construction, or equitable interpretation, to exonerate parties plainly within their scope;" a passage in which good sense, force and propriety of language are equally conspicuous; and which is amply borne out by the authorities, English and American, which he cites. And I must here record the well-founded remark of the attorney general to the effect, that whereas formerly statutes being extended equitably, as it was called, beyond their natural meaning, penal statutes were exempt from such extension; now that such liberties are not taken with statutes, there is no reason for construing penal statutes on such different principles as were formerly applied. Nor, I confess, can I think that the interests of the ship-building or any other trade are

so concerned in this matter as to afford an argument in favor of the defendant's construction.

I now come to the very words of this much-debated section 7. I leave out all which are needless to the matter in hand. I am satisfied that the words "equip, furnish," and "fit out," are not limited to transports and store-ships. The rule which interprets "*reddendo singula singulis*," cannot apply here; because all the words "equip, furnish," and "fit out," are sensible in reference to vessels intended to cruise or commit hostilities. The section reads thus: "If any person within any part of the United Kingdom shall equip, furnish, fit out, or arm any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince as a transport or store-ship, or with intent to cruise or commit hostilities," &c. Now we have to ascertain the meaning. On the part of the Crown it is said, that if there is an intent that the ship shall be employed in the service of any foreign prince, with intent to cruise or commit hostilities, any equipment with that intent is sufficient, however unfit to accomplish such intent; that the rigging, victualing, manning, and other parts of equipment are lawful or not according to the intent with which the ship will be used by those for whom they are done. This is said to be according to the very words of the statute. Supposing it to be so, it seems to me that the difficulty is only shifted; that the question remains and becomes this: What is the meaning of the words "with intent or in order that such ship shall be employed in the service of any foreign prince with intent to cruise or commit hostilities?" Does the expression mean with intent or in order that by means of such equipment she may cruise or commit hostilities; that she shall be in a condition for proximate hostilities, so that the port which she leaves will be a "station of hostilities?" or does it mean, as contended by the Crown, that an intent is within the statute, where the equipment is in order that she may be employed in the service of a foreign prince, though further acts on his part are necessary to enable her to cruise or commit hostilities?

I think that this is a correct statement of the question, and it seems to me that it must be answered adversely to the Crown's contention. I think that the fair and natural meaning of the words is, that the equipment must be fit for cruising or the commission of hostilities. The word "intent" before to "cruise or commit hostilities" seems put there on purpose to show this. But I dislike relying on a single word. Let it then be rejected, and the statute read thus: "If any person shall equip any ship with intent or in order that such ship shall be employed in the service of any foreign prince to cruise or commit hostilities." Now what would be the meaning if the words were "if any person shall equip any ship with intent or in order that such ship shall cruise or commit hostilities in the service of any foreign prince?" Surely that would require an equipment suited for such cruising. Do those words differ from the following: "If any person shall equip any ship with intent or in order that such ship or vessel shall be employed to cruise or commit hostilities in the service of any foreign prince?" And do these latter words differ from those in the statute? I think not. Take Mr. Mellish's illustration. If the words were, "equip with intent or in order that the ship shall be employed in the service of a merchant in the whale fishery," could it be said that any equipment or intent would be within the act, unless the equipment was or was meant to be fit for whaling?

I think that this is the plain, fair, and natural meaning of the words by themselves, but there are collateral considerations to the same effect. Building is not prohibited; selling is not prohibited. I do not agree with Mr. Mellish that if the statute does not prohibit building, it must necessarily permit equipping. It is possible that the legislature meant, You may build, which is harmless unless you equip, and that you may not do. But it seems to me that the omission of "build" and "sell" shows that something beyond a harmless ship and equipment was meant to be prohibited. It may be said that selling an equipped, armed, and manned ship is not prohibited, in words at least, and therefore that no argument can be derived from the omission of "build" and "sell." My answer is that there are no ready-made ships equipped and armed for sale, they are done to order; there was no need therefore to prohibit what never has happened or could happen. Such a prohibition, therefore, would be useless, whereas a prohibition of building and selling would not.

Again, Mr. Karlake's argument comes in: A man has a ship for sale; he may sell it to a belligerent if he does nothing to it; he may equip it if the buyer means to use it as a packet ship, but the same equipment is unlawful if the buyer's intent is different. So that the misdemeanor is committed or not, according to the intent, not of the equipper, but of his customer. Because, suppose the equipper says, and truly, "I equipped it, that the buyer might do as he pleased with it. I cared not what that was;" what intent is there then in the equipper's mind that she shall be employed to cruise? Moreover, the words are, "in order that," &c. Can there be an equipment in order that a vessel may be employed to cruise unless the equipment is calculated to enable her to do so? Again, surely the equipment of a vessel "with intent or in order that such ship or vessel shall be employed in the service of any foreign prince as a store-ship or transport," means an equipment as such, or an intent that such equipment

should enable it so to be employed. Read the enactment without the word "employed," and can there be a doubt of the meaning? Does the use of that word make any difference? I think it cannot properly be said that a man does an act with intent, unless he intends the act to bring about the thing intended, or unless the act is particularly fitted to do so. Thus, if a man builds a ship in which he means to go on a whaling voyage, he builds with the intent that the ship shall go on a whaling voyage though unfit for whaling; but if he builds her for another, he does not build her with intent that she shall go whaling unless he particularly adapts her to that service. In this case, if "building" with intent that the vessel should be employed to cruise had been forbidden, I think the forfeiture would have been incurred, for by her build she is particularly adapted for that purpose; but the word "equip" is used, and there is no forfeiture unless there is an equipment particularly fitting her for cruising, the equipper himself not intending to cruise in her.

I now come to section 8. This section is relied on by counsel of great ability on each side as being in his favor. It seems to me to be strong for the defendants. It, by implication, permits any equipment to a vessel already armed, provided it is not an equipment for war. If the Alabama, with her armament, could run into an English port, whatever was done to her in this country before, in the way of equipment, could be done now lawfully, and she might sally forth armed and equipped, though it is said the equipment alone was unlawful. It is said that such ship must have been equipped before, but she may have lost her masts, sails, or screw, and, according to the argument of the Crown, they may be replaced if she is armed already, but not if she is unarmed. Or she may come here armed, and have her equipment bettered to any extent; she may have new masts, rigging, sails, boilers, or engines, but any one of these, if she is unarmed, is unlawful.

Further, in section 2, British subjects are prohibited from serving in vessels used, fitted out, or equipped, or intended to be used for any warlike purpose. Surely the vessel in which service is prohibited by this section must be capable of fighting. Again, the title and preamble both show that the statute was directed against fitting out and arming for warlike purposes and operations. Section 2 is in the same sense.

It is said that this construction requires the vessel to be *armed* to be within the act, and that so the words "furnish, fit out, and equip," are superfluous. I agree that they are not to be so treated, if it can be avoided, though I strongly incline to think that the person who used them attached no very definite idea to them. In the title it is "fit out or equip," without "arm." In the preamble it is "fit out and equip *and* arm." In section 2 it is "used, fitted out, or equipped, or intended to be used for any warlike purpose." In section 7 the words are "equip, furnish, fit out *or* arm." Surely no precise idea was in the mind of the author of these varying though similar expressions. The probable intent was to use sufficiently comprehensive words, and to avoid such a question as whether a ship was "armed" strictly speaking, and to make it enough if she was equipped for warlike purposes. Such a case may well be, that the ship, though not armed, is equipped for warlike purposes. By "armed," I suppose it would be meant ordinarily that she had cannon, but if she had a fighting crew, muskets, pistols, powder, shot, cutlasses, and boarding appliances, she might well be said to be equipped for warlike purposes, though not armed.

On these grounds, independently of authority, and on the very words of the act, I think that the construction contended for by the Crown is wrong, and that that of the defendants, prominently put by Mr. Mellish, is right, viz., that the section prohibits that equipment only which is itself such, that by means of it the vessel can commit hostilities, and that no equipment which gives no means of attack and defense is within section 7.

It may be said this is a lawyer's mode of dealing with the question, merely looking at the words. It is so, and I think it right. A judge, discussing the meaning of a statute in a court of law, should deal with it as a lawyer and look at its words. If he disregards them and decides according to its makers' supposed intent, he may be substituting his for theirs, and so legislating. As has been excellently said: "Better far be accused of a narrow prejudice for the letter of the law, than set up or sanction vague claims to discard it in favor of some higher interpretation, more consonant with the supposed intentions of the framers or the spirit which ought to have animated them." Important as are the objects of this statute, it must be construed on the same principles as one regulating the merest point of practice or other trifling matter.

But I am willing, as far as possible, to look beyond the mere words of the enactment, to look at its general scope and intent, and to take what is called a broader view. In my opinion the statute was intended to prevent any of the subjects or territories of this country from being belligerent; to prevent them from being immediately or proximately concerned in hostilities between foreign belligerents. With this object it forbids British subjects to enlist in foreign service for hostile purposes *everywhere*, whether the enlistment is in or out of the Queen's dominions. It forbids every one, whether a subject or not, to enlist persons *within the Queen's dominions*. It forbids the fitting out of vessels of

war in the *Queen's dominions* by all persons, whether the *Queen's* subjects or not. It thus forbids the British subject being a combatant, and the British territory a station of hostilities. It is personal and local to the extent of the *Queen's* sovereignty. It does not forbid the British subject, if abroad, from fitting out and arming a ship; nor if here, from building and peacefully equipping it. Those provisions of the statute which forbid enlistments of British subjects anywhere go beyond the municipal enforcement of international law; but as far as those of the provisions of section 7, now in question, are concerned, it was intended to prevent the subjects of this realm giving cause of complaint of violation of international law by making the country a station of hostilities. I think that a vessel departing neither armed nor equipped so as to be capable of attack or defense, is not a violation of international law, be its object what it may. No doubt the equipment of a vessel as a transport is prohibited by this act, and yet such a vessel is not "equipped for warlike purposes," nor is the port from which she departs a station of hostilities. But, as I have said, I know that in some cases the statute goes beyond the rules of international law; in the provisions in question I think it does not. Historically we know how these words, inconsistent with the title and the preamble, were introduced.

Further, if we consider the different matters brought forward to assist us in putting a construction on this act of Parliament, they all seem to confirm the opinion which I have expressed. There is no doubt what was the origin of the statute; what was the object immediately in view. It was to prevent the issuing forth of hostile expeditions from British territory. It was not, to judge from its history and the speeches made in reference to it, to prevent the departure from this country of vessels incapable of attack or defense. So of the American statute. Its origin and the object immediately in view are well known. They were the same as in the case of our statute. Nay, we know from American authority that it was intended not to prevent a commerce in vessels of war. But the language of the American statute is decisive. In section 3 the words are "fit out and arm." It is true the section proceeds: "or be concerned in furnishing, fitting out, or arming;" but clearly that means, be concerned in any part of the whole offense. There must be a fitting out and arming for any person to be concerned in either. It is absurd to suppose that the statute should make it an offense to fit out and arm, and also an offense, and an equal offense, to be concerned in fitting out where there was to be no arming. Besides, the same words apply to each matter, viz., with intent, &c. Further, section 10 of the American statute only applies where the ship is built for warlike purposes, and the cargo principally consists of arms and munitions of war, and the number of men or other circumstances render it probable that such ship is intended to be employed by the *owner* to commit hostilities, &c. It is clear that the bond to be given under these sections could not be required in the case of the *Alexandra* until she was armed or had a cargo principally arms and munitions of war.

So, again, if we look at the rights and the obligations created by international law, if a hostile expedition, fitted out by a state, leaves its territory to attack another state, it is war; so, also, if the expedition is fitted out, not by the state, but with its sufferance, by a part of its subjects or strangers within its territories, it is war, at least at the option of the assailed. They would be entitled to say, Either you can prevent this or you cannot. In the former case it is your act and is war; in the latter case in self-defense we must attack your territory whence this assault on us proceeds. And this is equally true, whether the state assailed is at war or at peace with all the world.

The right, in peace or war, is not to be attacked from the territory of another state, that that territory shall not be the basis of hostilities. But there is no international law forbidding the supply of contraband of war; and an unarmed vessel is, in my judgment, that and nothing more. It may leave the neutral territory under the same conditions as the materials of which it is made might do so. The state interested in stopping it must stop it as it would other contraband of war, viz., on the high seas.

I have hitherto considered the case independently of the authorities. They are exclusively American, on the American statutes. I concur in the eulogium which the attorney general passed on American legislation and American judges in this matter. An English lawyer must rejoice to see that those who administer in America a law, in great part our common inheritance, administer it on the same fearless and honest principles as those on which I venture to say law is administered here. The way to show our sense of their example is, not to consider what would be acceptable to their countrymen merely, and decide accordingly, nor to be influenced by the foolish threats which have been uttered, but to decide, as their judges have done, truly and honestly to the best of our ability.

Now there are but three decisions to be noticed. The first is the case of the *Independencia*. It has not the slightest bearing on the present case. The *Independencia* was an armed vessel. Being so, she came to Baltimore, and there had her fighting crew increased. Mr. Justice Story expressly states, as a fact found, that the court is driven to the conclusion "that there was an illegal augmentation of the force of the *Independencia* in our ports by a substantial increase of her crew. This renders it wholly unnecessary to enter into an investigation of the question whether there was not also an illegal

increase of her armament." As to the *Altravida*, he says there was "an illegal outfit and an enlistment of her crew within our waters for the purposes of war." He decides then on the ground of warlike equipment in the American port. I doubt if Mr. Jones was right when he cited this case to show that it was not an authority against him.

Another case is that before Chief Justice Marshall. If a precedent of honest and eloquent indignation was wanted, I would refer to his judgment; but the case itself, like the other, has no bearing on the present. The vessel was "completely fitted in our ports for military operations;" she could have fought at the moment of leaving Baltimore. She might have been subject to the penalties of piracy, but she was not the less equipped and armed for war.

The next case is *The United States vs. Quincy*. I say, with all respect, that the case was wrongly decided. The learned attorney general confessed it. It supposes that a person can assist in doing what nobody is doing or trying to do. It applies a pleading test, which is of very little use in discussing a statute, and doubly misapplies it. First. It is not enough to use the words of a statute in an indictment, where, from their position in the statute, they would have a different meaning to what they would have standing alone. Secondly. The objection is misunderstood. Supposing it taken to the indictment, it would be that the indictment should have said, "A was fitting and arming, or attempting to fit and arm, and the defendant was assisting to fit." Further, this case does not say that if the principal in the transaction were indicted, anything less than a warlike equipment would suffice; and that is the only question before us.

These authorities, to my mind, if anything, are in support of that view of international law and of the statutes which I have expressed. The history of our statute, the history of the American statute, the duties of international law, and the speeches and acts of jurists and of statesmen, all point to the same conclusion. A like opinion was recently indicated in an important official statement, in which it was said that "England was preventing the departure of hostile expeditions from her shores." This, whether a correct statement in point of fact, I know not; but it is by implication a correct statement of what she is bound to do by international law, and what she has power to do by municipal law.

I am aware of the consequences if this is the law. A ship may sail from a port ready to receive a warlike equipment; that equipment may leave in another vessel, and be transferred to her as soon as the neutral limit is passed, or at some not remote port, and thus the spirit of international law may be violated, and the letter and spirit of the municipal act evaded. But as the law stands, or as both laws stand, I see no remedy. I do not see what line can be drawn but the sharp line which Sir Hugh Cairns stated. If it is unlawful to put a peaceful equipment on a ship, because at three miles from the neutral territory she is meant to receive a warlike equipment, why is it not unlawful if the distance is to be a thousand miles, or in this case one of the southern ports? If she may not sail peacefully equipped to a southern port, why would it be lawful to send there her parts ready to be put together? If not those, why the materials of which they could be made, and so on? I am aware, of course, that it would be easy to draw a line and make a law prohibiting the sending forth of a ship, and permitting the exportation of its parts, leaving that to be dealt with as contraband of war, and that such a law would make a broader distinction between what would and would not be lawful than now exists, and that its evasion by sending forth the parts of a ship would be more hurtful and less hurtful and irritating to the opposing belligerent. Whether such a law would be desirable I do not presume to suggest. What I wish is to show that in considering this as a matter of principle, I have borne in mind, first, that the present law is capable of easy and mischievous evasion; and secondly, that if it is sought to extend it by construction, it is impossible to stop short of the prohibition of the export of contraband of war generally; though, thirdly, a positive law so stopping would not be difficult of enactment.

An argument which I have partly dealt with already has been used, (not indeed before us,) that there may be an attempting or assisting by persons who do not commit the complete offense of equipping or arming. So there may; but there can only be an attempt to commit an offense where, if the attempt succeeded, the offense would be committed. A person can only assist in doing an act where the act is to be done. Now, there is one thing in this section clear beyond doubt, viz, that can be no offense against it unless that offense is committed within the Queen's dominions; that, therefore, no one can attempt contrary to the provisions of this act, unless the equipment attempted be meant to be done in the Queen's dominions; and that no one can assist contrary to those provisions, unless some one is equipping or attempting to equip within the Queen's dominions. This was admitted by the attorney general, and indeed is to my mind too plain for argument.

Taking this view of the statute, I think that a right direction to the jury would be: If you are satisfied that the parties concerned were equipping or arming, or attempting to do so, the ship claimed, with intent that it should be employed in the service of a foreign prince to cruise or commit hostilities against others as alleged, find for the Crown; but such equipment or attempted equipment must be of a warlike character,

so that by means of it she is in a condition more or less effective to cruise or commit hostilities, otherwise find for the claimant.

Holding this opinion, I think that the direction of the Lord Chief Baron was substantially, if not verbally, correct. Still, in considering whether the jury came to a wrong conclusion, whether the verdict was against evidence, or otherwise unsatisfactory, all that his lordship said must be taken into account; and though the proceeding is penal, if there had been any evidence on which the jury could have acted, I should have thought that there ought to be a new trial, considering that the defendants kept out of the box witnesses who must have known what the truth was. But interpreting the statute as I do, I think that the verdict was right. I have no doubt that the vessel was building and equipping for the confederates, and in order that they might use her, when armed and equipped, for the hostilities against the federals. This was being attempted, but I see no evidence that it was intended to arm or equip her in the Queen's dominions so as to be capable of attack or defense. On the contrary, I believe it was intended to evade, not infringe, the statute, not to commit a misdemeanor, nor to do or attempt to do what would cause a forfeiture of the ship. I believe on the evidence that it was intended to deal with this vessel as with the Alabama, namely, to get her out of the country, and give her her warlike equipment and armament out of the Queen's dominions. It is worthy of remark that the information does not suggest that it was intended to arm her here. I think, therefore, that this other ground for a new trial fails, and that the direction was right, and that on a right direction the verdict for the defendants was right on the evidence, and consequently that the rule should be discharged.

MR. BARON CHANNELL. This was an information filed by her Majesty's attorney general, insisting upon the forfeiture of a ship called the "Alexandra" under the provisions of the seventh section of the foreign enlistment act.

That section makes certain acts done with respect to a ship misdemeanors. It then proceeds to say that "every such ship or vessel shall be forfeited and may be seized," as therein provided for.

In the present case a seizure has been made, and this seizure had to be justified by the Crown at the trial of the information before the learned Lord Chief Baron. Upon that trial a verdict was given for the defendants, and the learned attorney general in last term obtained a rule nisi for a new trial upon five grounds.

Those five grounds may be ranged under two heads, viz, those of misdirection, and of the verdict being against the evidence.

The question as to the verdict being against the evidence necessarily depends in some degree upon the question whether there was misdirection or not, because we must see clearly what were the questions which the jury had to decide before we can apply the evidence and see whether it supports the finding of the jury. The consideration of the evidence would, therefore, whatever view I were to take on the question of misdirection, come more appropriately after than before the consideration of the construction of the statute. But it will be unnecessary for me further to revert to the question of the verdict being against evidence, in the view which, after much anxious consideration, I feel compelled to take of the construction of the statute, and of the effect of the Lord Chief Baron's direction—a view which differs in some respects from the opinions of the Lord Chief Baron and of my brother Bramwell, and leads me to a different conclusion to that at which they have arrived, and which, for that reason, and on account of the great respect which I always have for their opinions, I express with the utmost diffidence.

Now, under the head of misdirection, I include an inadequate direction, and also a direction which, though right in the main, would be calculated to mislead a jury. Where the question turns upon the construction of an act of Parliament, the judge is, I think, called upon to explain to the jury the sense in which any doubtful word or expression in the act is to be understood. See *Elliott vs. The South Devon Railway Company*, 2d Exchequer Reports, p. 725.

In the consideration of the question of misdirection it will be convenient, first, to endeavor to construe the act and see what direction ought to have been given, and then to consider whether the direction given agrees in substance with what ought to have been given.

The foreign enlistment act, particularly the seventh section, is very imperfectly worded. There is no doubt that it was in a great measure, but with what appear to me to be important variations, penned from an act of the United States passed in Congress, first in the year 1794, and re-enacted by Congress in the year 1818.

This circumstance has given rise to a great deal of argument on both sides. Sir Hugh Cairns has suggested, apart from the language of the acts of Congress, certain *a priori* views tending to show why the American act was passed and altered; and then, treating the acts of Congress as with some exceptions identical with our own, he seeks to apply certain decisions in the courts of America to the consideration and construction of our own statute. Into this very wide field of inquiry he has constrained the counsel for the Crown to follow him, and they have done so in the very order in which

his argument was addressed to us. I do not say that any time was lost, or that in the course of the very long argument that was addressed to us any view was submitted not calculated to assist the court; but, having carefully considered the arguments, I cannot help thinking that the decision of this most important question should proceed on the grounds less wide than those to which the attention of the court has been so ably called.

Faulty and imperfect as may be the wording of the seventh section of the foreign enlistment act, (and more imperfect or faulty wording I can scarcely conceive,) if, notwithstanding all this, the words of the seventh section read with reference to the other part of the act do, by a reasonably fair interpretation of our statute and the evidence, embrace the case of the *Alexandra*, then in my judgment it scarcely becomes necessary to consider what have been the decisions of the courts in America upon acts of Congress in the main much the same, but, in not unimportant respects, different from our own act.

Whether for the present purpose the foreign enlistment act is to be considered as a penal statute, the Crown in this case proceeding for a forfeiture of the ship, or is to be considered as an act for the first time creating a criminal offense, the rule to be applied in order to its construction is that which is so well expressed in the passage from the late Mr. Sedgwick's treatise quoted by my brother Bramwell, and to which passage I need not advert in detail; but I may say that it deserves, in my judgment, the high eulogium which my brother Bramwell has passed upon it, and is, I think, in perfect accordance with the American and English authorities which that late learned writer has cited in support of his view.

Now, faulty and imperfect as the wording of our statute, particularly the seventh section, is, there are certain matters clear enough, in my judgment, to be beyond all reasonable doubt. First, the statute is not a statute passed either merely to define what shall be an offense, or to create an offense for the first time and to define its punishment, but it is in its express intent an act aimed at the prevention of the offense, not at punishment merely. It is, therefore, in every sense, a remedial statute. And, secondly, it is a statute intended to remedy a mischief, which, though forcibly expressed, is only contingent and *possible*, and not *certain*. The language of the preamble points to certain acts which *may* be prejudicial to and *tend* to endanger the peace and welfare of the kingdom; and further, it goes on to recite that the laws in force are not sufficiently effectual for preventing the same. The statute has not, therefore, for its object solely the prevention of acts which, if done, *must* endanger the peace of the kingdom, but appears from the preamble to be aimed also at acts which *may* possibly excite such feelings in other nations as will have that effect. This inclines me to think that the equipment of ships to be employed at a future time for war, though not so complete in this country that the ship shall be at once able to commit hostilities, may be within the act.

I do not, of course, come to any conclusion from the preamble alone that such an equipment is prohibited; what we have to look at are the enacting words; but I think that the preamble is, as Lord Coke calls it, a key to unlock the meaning of the act where it is doubtfully expressed; and I concur in the decisions which determine that the words of an enacting clause shall not be cut down or restricted by the preamble.

So that if the case which I have mentioned were clearly within the words of the seventh section, but not within the mischief as declared by the preamble, I should hold that it was prohibited by the act. As my brother Bramwell has remarked, the legislature often finds it necessary, in order to restrain certain acts, to prohibit other acts under color of which the acts to be restrained may be done.

Now this act has clearly two distinct and several objects in view. The first is the enlisting or engagement without license of British subjects to serve in a foreign service. There I agree that the statute extends to the whole world, provided the persons enlisting or engaging are British subjects. The second object is the fitting out or equipping in British dominions of vessels for warlike purposes. The part of the act which relates to the second of these objects includes all persons, whether British subjects or not, provided the offense prohibited by the act is committed within the Queen's dominions.

I am not insensible to the value of the arguments which have been addressed to us by the counsel for the claimants founded on these different objects. These arguments raise one of the many difficulties in the case. They do not, however, seriously affect my view as to the conclusion to which we ought to arrive. Prohibition and prevention of a mischief which may be prejudicial to and tend to endanger the peace and welfare of the kingdom were, as I have said, aimed at by the statute. By municipal law every one, whether a British subject or not, being within the dominions of our sovereign, and claiming the protection of the government of this country, may be bound. Out of her dominions the municipal law of this country can only bind the subjects of the realm.

We ought not to lose sight of the first object contemplated by the act and provided for by the first six sections. But it is the first part of the act which relates to the second object that principally requires our attention. The last part of the act, beginning at the seventh section, does by that section provide against equipping vessels

with a certain intent, issuing or delivering any commissions for ships with the intent therein mentioned, and lastly for the forfeiture of the ship or vessel. I have said that the forfeiture clause following the clause creating certain misdemeanors applies to "every such ship." This is certainly rather clumsily expressed, but we must take it that every ship is forfeited with respect to which any of these misdemeanors have been committed.

We have, therefore, to see what are the misdemeanors created. They are: First, equipping, fitting out, furnishing, or arming a ship with a certain intent or purpose; secondly, attempting or endeavoring to equip, &c., with the same intent; thirdly, procuring to be equipped, &c., with that intent; and fourthly, aiding, assisting, or being concerned in equipping, &c., with that intent.

Now, it is, I believe, the unanimous opinion of the court, that the second, third, and fourth of the offenses here spoken of mean respectively the attempting, the procuring, and the assisting in such an equipment as is spoken of in the first; that is to say, that the secondary offenses, as they have been called, are the attempting, &c., such an equipment as if completed would amount to the principal offense. If, therefore, we can arrive at any clear conclusion as to what is the principal offense, the question whether there was any attempt, &c., to commit that offense becomes a mere question of evidence. This being clearly understood, we may, for the purpose of construing the act, disregard all the words about attempting, &c., and aiding, and being concerned in, and so on.

We have, therefore, now reduced the main question in the case to this: What did the legislature mean by the words "equip, furnish, fit out, or arm a vessel with intent or in order that she should be employed in the service of a foreign power as a transport or store-ship, or with intent to cruise or commit hostilities against a power with whom we are not at war?" Arming is not charged in the present information; we may therefore leave out the words "or arm." The words "transport or store-ship" are also immaterial, now that the ninety-seventh and ninety-eighth counts charging the Alexandra to be a transport or store-ship are abandoned, except, always, that we must adopt such an interpretation of the words common to both clauses as they would be capable of bearing when combined with the words "as a transport" as well as when combined with the words "with intent to cruise."

The words "equip," "fit out" and "furnish" seem to me to mean nearly the same thing. Throughout the whole course of the argument in this case little stress was laid upon any supposed difference between the words "equip," "fit out," and "furnish." We may therefore still further reduce the words which we have to construe to these: "equip, with intent or in order that the vessel shall be employed in the service of a foreign power with intent to cruise or commit hostilities."

It is admitted, I think, on all sides that these are the words upon which the main question in the case turns. Now, it is clear that the offense created by these words is one consisting of an act done with a certain intent or purpose. The act and the intent must both be present to constitute the offense, and the act must be done and the intent must exist within the Queen's dominions.

It is also, I think, agreed on both sides that the intent spoken of must be the intent of some person who has control over the vessel, so as to be able to carry out his intent or purpose.

We now come to the points on which there is a difference of opinion. The attorney general contends that any equipment, however peaceful in its nature, will be an offense against the act, provided there is an intent that the vessel shall be used at some future time in the service of a belligerent. He admits that where the equipment is clearly peaceful there will be a much greater difficulty in proving the intent; but he says, that assuming that you can prove the intent, then any kind of equipment will be within the case contemplated by the act.

On the other hand, the counsel for the claimants connect more closely the act and the intent; that is to say, they explain the general word "equip" by the subsequent words "with intent or in order that the ship shall be employed" in a given manner, and they say that these words show that the equipment spoken of is an equipment suitable to the employment. Further, I understand them to go the length of saying that it must be suitable only for that employment.

It is remarkable that the words "or in order that" are not in the American act, but have been added in ours. This will be a subject for remark by-and-by when we come to consider the applicability of the American cases. Now, we have only to see what difference these words make. Do they enlarge the scope of the act by mentioning another case, another kind of equipment which is also within the act, which in the course of the argument I was much disposed to think was the right view, or do they rather restrict the previous words, explaining them and throwing a light upon them, as suggested by Mr. Mellish? It seems to me now that the latter view is the right one, and that the words "or in order that" restrict and explain what is meant by "with intent" rather than include any new case not before included. If I do an act which is entirely immaterial to the employment of the ship, as painting her name on her stern,

I may do that having all the time the *intent* that she shall be employed in a given manner, but I cannot do it *in order* that she may be so employed, for it has no reference or relation whatever to her employment, and does not further her being employed in one way more than another.

Thus, there may be an equipment "with intent that," which is not an equipment "in order that." But can there be an equipment "in order that," which is not "with intent that?"

The attorney general has suggested that there *may*, or at all events that the framers of the act thought there might. He argues that the words were inserted to meet the argument that builders and other tradesmen are not parties to the intent; but, he says, at all events they may be said to do it "in order that." But is it clear that a man can do an act *in order* that a result may follow, without intending that result? Does not every man intend to effect the object of his act? If, however, we do suppose such a case, where a man without having the intent that the ship shall be employed in a given manner, yet equips her in order that she may be so employed, is not the inference as strong as possible that the equipment must in that case be of a nature suitable and appropriate for that employment? It seems, then, that if we are to give any force to the words "in order that," it must be as explaining and illustrating the words "with intent that."

It may also be remarked that in this information the charge is that certain persons did equip the *Alexandra* "with intent and in order that," &c. This shows that whoever drew the information supposed the two expressions to mean the same thing. I do not attach much importance to the last remark, for if we ought to decide them to be different, then I think the words "and in order" in the information might be rejected as surplusage.

It seems, then, on the whole, that in order to justify the seizure the Crown must show an equipment (either completed or attempted) of the *Alexandra*, *in order* that she might be employed, &c.; and further, that this necessarily means an equipment enabling, or tending to enable, her to be so employed. This last conclusion I draw also from the nature of the words "equip, furnish, and fit out."

I do not adopt the idea that any one of these words can include building. The attorney general at one time seemed disposed to contend that fitting out might include building. I do not think that he adhered to that throughout. If he still holds that opinion, I certainly differ from him upon the point. I do not pretend to say whether any particular act, as for instance fixing the ship's bulwarks, is part of the building or part of the equipping and fitting out. That, I think, might be a question for the jury. I do not even say that acts done to the structure of the vessel may not be equipments. I should say that you were equipping a ship for an arctic expedition by strengthening her framework in order to enable it to resist the pressure of the ice. But I say that equipping, fitting out, and furnishing are all acts subsequent in their nature to the building, and in speaking of which you contemplate the ship as already in existence.

I think there is nothing contradictory to this view in the cases cited by the attorney general, viz., the *United States vs. Guinet*, in *Wharton's State Trials*; the ship *Brothers*, and the ship *Mermaid*, both in *Bee's Reports*.

What it seems to me that these words "equip, furnish, or fit out" do all signify is this: contemplating the subject-matter of the equipment as already in existence, they express an idea of preparing it for some purpose or another. That purpose may be either expressed or implied. When you speak of "equipping a ship" *simpliciter*, it may be that that means getting her ready for sea, because to go to sea is the natural and ordinary use to which a ship is put. If you state the nature of her employment, then equipping means getting her ready for that employment. I interpret the words, therefore, as showing that the equipment spoken of in the seventh section must, as a matter of fact, be an equipment for the employment spoken of.

If we are left in doubt whether this is the right interpretation or not, I think, as I have said before, that we may and ought to look at the preamble to see the object of the act. There we find that the mischief to be remedied is one which may arise from the fitting out and equipping and arming of vessels for warlike operations. This, then, is the very case which I have interpreted the seventh section to strike at, provided that the employment there mentioned is an employment for warlike operations. What is the employment there mentioned? "Shall be employed in the service of a foreign prince, with intent to cruise or commit hostilities." It has been assumed in the argument on both sides that this may be read as if the words "with intent" were there omitted, as they are in the American act. Whether this is right or not, their insertion certainly causes great confusion. In the first place, it provokes comparison with the other clause commencing with "with intent," causing one at first sight to read them as showing alternative intents, either of which would, with the requisite act, constitute the offense. This, on looking into it, is agreed on all sides not to be the right construction. But they create a further difficulty. This intent now spoken of is necessarily from the collocation of the words, "shall be employed *with intent*," an intent of the employer, and not of the equipper, which is, as it were, engrafted upon the

intent of the equipper; and it is very difficult to see how one man can intend that another man shall intend something or other. It is probably this difficulty which has prevented the counsel on either side from founding any argument upon these words. But for this, I should have thought it might have been argued that an employment with intent to cruise differed from an employment to cruise in this—that it might include an earlier employment, and might cover the voyage in an unarmed state from one port to some port where the vessel was to be armed, and from which she was to start to cruise. But even if I adopt the view taken by the attorney general that an employment with intent to cruise may be construed the same as an employment to cruise, I think that an equipping, in order that the vessel may be employed to cruise or commit hostilities, means an equipping for warlike purposes. So far, then, I think, it is clear that there must be an equipment for war, and that an equipment which cannot be used, and is not useful for war, will not do. The conclusion at which I have so far arrived is drawn from the seventh section, with such light as is thrown upon it by the preamble and by the second and eighth sections. In drawing that conclusion I agree in a great measure with the argument of the claimants, and with the judgment of the lord chief baron and my brother Bramwell.

But another and, to my mind, very important and difficult question arises. Suppose that there is evidence of some equipment or other, either completed or attempted, but that the equipment does not in itself show whether it is an equipment for war or not, may we take into consideration evidence of the intent to prove that it is actually and in point of fact an equipment for war? Upon this question, after much anxious consideration, I have arrived at the conclusion that we may. I do so with the most sincere and respectful deference to the opinions of the lord chief baron and my brother Bramwell, and with great distrust as to the correctness of my own judgment.

It will be convenient, now that I am about to consider whether the character of the equipment, whether doubtful, may be explained by the intent of the parties, to see what effect the clause, "as a transport or store-ship," has upon the interpretation of the section, because it is especially in the case of a store-ship that we see the absolute necessity of explaining the character of the equipment by the intent. Now is there anything which militates against the view, that the equipment, with intent or in order that the ship may be employed in a given manner, means an equipment suitable to that employment, in the fact that one of the employments spoken of is "as a transport or store-ship?" It may well be that there is no equipment specially suited to a store-ship. All equipments of an ordinary merchant vessel may be and probably are suitable to a store-ship. But is it any reason for saying that the equipments struck at by the act are not equipments suitable for a store-ship, because being so they would be also equipments for another object? Is a gun the less an equipment for war because it may be used for firing salutes?

But the counsel for the Crown deduce from the case of the store-ship, as it seems to me, a very important argument; they say that in that case the jury must necessarily look at the evidence of the intent to enable them to say whether the equipments are for a store-ship or not; and if so, why are they not to look at the evidence of intent to say whether certain equipments of a doubtful nature are for warlike purposes or not. I grant at once that they may, provided that the equipments as to which the doubt exists are such as can be directly used for war without further addition. They might, of course, if they were in doubt as to whether a gun was an equipment for war, look at the evidence of intent to satisfy themselves that it was not intended to be used simply for firing salutes. But the question is more difficult, supposing that the equipments are such as can only be used for war by some addition being made to them. Suppose a jury to find, as a matter of fact, that a certain vessel is intended to be sent to the West Indies, and then to have guns put on board—that when her guns are on board, the mainsail with which she has been equipped in Liverpool may assist her in chasing an enemy's vessel; are they then justified in deducing from that, that the mainsail is an equipment in order that she may be employed to cruise? I have, after giving the question my best consideration, come to the conclusion that the jury may so reason. I am supposing a case where an equipment is made which, though not in itself sufficient to make the vessel a war vessel, is still a necessary part of the equipment of a war vessel. It would, as it strikes me, be a question for the jury to consider whether the equipments are in fact equipments for war; and they may decide that question for themselves by the nature of the equipments if they sufficiently show it, (in which case they will have to look to the intent and purpose only so far as to see that the vessel is to be employed against a power with whom we are at peace,) or they may decide that certain equipments which are capable of being used for war are, as a matter of fact, equipments for war, on the ground of evidence being laid before them showing an intent so to use them. But if a jury found specially these facts: that A. B. had equipped a vessel which was in its structure capable of being converted into a war vessel to the extent merely of enabling it to sail away from this country; that he knew that the purchaser intended to convert it into a war vessel; but if the jury also distinctly found that what A. B. did to it was done not in order to convert it into a war

vessel, or in order to be useful to it when so converted, but simply in order to enable it to reach a port where the purchaser might, if he pleased, convert it; in such a case, I do not mean to say that A. B. ought to be convicted of a misdemeanor under this act. That case would not, I think, be within the act, because the jury would there, in effect, find that the intent with which the act was done was a different one from that mentioned in this section. So far, then, as to what may be called the principal offense.

There remains for consideration the "attempting" and the "aiding and being concerned in," &c. I have said that the attempt must be to do the act which has been made an offense by the previous clause. The equipment attempted must therefore be an equipment in this country, and of the nature which I have described. In this, the counsel on both sides and all the members of the court are agreed. Where an attempt is charged, we contemplate an equipment commenced but interrupted. In that case, the jury will certainly have still more difficulty in seeing whether the equipment is an equipment for war, but in my judgment they may so find upon evidence not of the nature of the equipment but of the intent of the parties, provided always that the nature of the equipment, so far as it appears, is such that it *can* be employed for war-like purposes. The same rule applies to the assisting and being concerned in equipping. It must, in the opinion of the jury, be an equipment for war, but I think that their opinion may be formed either from the nature of the equipment or from the intent.

Having arrived at this construction of our statute, I will refer shortly to the cases cited from the American reports, for the purpose for which, and for which only, I think they ought to be noticed, that is, to see whether there is anything in the opinions of the learned judges of that country, for whose opinions I have the greatest respect, which were delivered in cases to some extent *in pari materid* with the present, which ought to make me pause or review the interpretation I have adopted on looking at the words of our own statute. The cases cited are the cases on the point of what the meaning of equipment is, to which I have already referred; and besides these there are the cases of *The United States vs. Quincy* in 6th Peters, and *The United States vs. Gooding* in 12th Wheaton's Supreme Court Reports.

In Quincy's case the portion of the decision which is material in our case was this: that it was not necessary that the jury should find that the vessel when she left the United States was armed, or in a condition to commit hostilities, in order to find the defendant guilty. The court do not say that she need not be equipped for war, but only that she need not be completely equipped. This view, then, coincides with the view which I have taken of our act. It may be that some of the other points decided in that case are not very intelligibly reported, or even not accurately decided; but, at any rate, there is nothing decided but what is in accordance with my interpretation of our act. Even if there had been, I think that the insertion of the words "in order that" in the English act, words to which I attach a certain importance, and which are not found in the American act, and the omission in the English act of any words corresponding with the tenth and eleventh sections of the American act, might cause me to hesitate before acting on the authority of that case. I think that the tenth and eleventh sections in the American act tend to show that the third section in that act is less restrictive than the seventh section of our own.

The United States vs. Gooding was the case of a supposed slaver. The statute, on the construction of which the case turned, was very similar to the act which we are considering. It was held in the case that it was "an act combined with an intent, and not either separately, which was punishable." It was decided that the equipment need not be a complete equipment, but that a partial equipment was sufficient. There are also words in the decision which would seem to show that the equipment must be an equipment for the purpose of a slave voyage, as a matter of fact, though it might be only a partial one. It is said, "Whether the fitting out be fully adequate for the purposes of a slave voyage may, as matter of presumption, be more or less conclusive, but if the intent of the fitment be to carry on a slave voyage, and the vessel depart on the voyage, and her fitting out is complete as far as the parties deem it necessary for their object, then the statute reaches the case." That seems to me to amount to this, that there must be a fitting out in point of fact for a slave voyage; but either the intent or the nature of the fitting may determine whether it was for that purpose. This agrees with the conclusion to which I have arrived.

I now proceed to consider what questions ought to have been left to the jury. Disregarding any question as to the proper style of the Confederate States, which is no doubt sufficiently laid in the information, the questions, if my views as before explained be right, should have been; 1st. Was there an intent, on the part of any one having a controlling power over the *Alexandra*, that she should be employed in the service of the Confederate States to cruise or commit hostilities against the United States? 2d. If so, was she equipped, fitted out, or furnished in a British port in order to be employed to cruise, &c.? 3d. If not equipped, was there an attempt to equip her in a British port in order that she should be so employed? 4th. Or did any one knowingly assist, &c., in such equipment in a British port? I do not, of course, mean to say that the

questions should have been left to the jury precisely in the words which I have stated, but I think that in substance these questions should have been put. Now, with great submission, I doubt whether the substance of these questions was so left to the jury that they would be likely to understand rightly the points which they had to decide.

The question finally left to the jury seems to me to be correct, as far as it goes. The lord chief baron says: "Was there any intention that, in the port of Liverpool or any other port, she should be equipped, furnished, fitted out, or armed with the intention of taking part in any contest?" That, I think, so far as it went, was right; but in my opinion it ought to have been accompanied by some further explanation than was given of the words "equip, &c., in order that." Further, I think the jury ought to have been directed that they might form their opinion as to whether she was to be equipped with the intention of her taking part in any contest, either from the nature of the equipment or from any evidence before them as to the intention of the parties with respect to such equipment if they thought *ancipitis usus*. I think, further, that though there may have been no equipment completed, the question whether there was an attempt at such an equipment as would, if completed, have been within the act, should have been distinctly left to the jury. This was not left to them as a separate question, though it may have been, and on the whole I think was included in the question; "Was there any intention that she should be equipped," &c. It has been contended by the Crown that, besides these objections to the sufficiency of the summing up there are other expressions in it calculated to mislead the jury. The lord chief baron remarked in strong terms upon the analogy of selling gunpowder and other articles, in short, whatever can be used in war for the destruction of human beings, to a belligerent, and concluded this part of his observations with the words: "Why should ships be an exception?" adding that, in his opinion, in point of law they were not. The question, "Why should ships be an exception?" is repeated in another part. Now, if these observations were understood by the jury to apply to a state of things existing under the provisions of, or with reference to, international law alone, and quite irrespective of any municipal law, they would be, I think, unobjectionable; but they were in my humble judgment calculated to mislead a jury, unless attention was distinctly drawn to the fact that this statute, whatever be its true construction, does certainly place equipped ships in a different position to other contraband of war.

The chief baron again used expressions which it is said may have led the jury to understand him as drawing a distinction between equipping without an order and equipping in obedience to an order, instead of distinguishing between equipping and building, which I now understand to be the meaning he attributes to the words with respect to which this complaint is made; and it is a meaning which I think they may fairly bear, and would necessarily bear, if the clauses were inverted, as was suggested by me in the course of the argument, and as I understood was assented to by the learned attorney general.

Again, the lord chief baron having stated that a man may sell an armed ship to a belligerent if he has it ready, which is, I think, correct, proceeds, as I understand, to draw from that a conclusion that he may make one to order; and possibly he may build a ship, but he may not equip it in order that it may be employed for war. Now, if the lord chief baron is to be understood as saying that a man may make to order the same kind of vessel as he may sell when he has it ready, that is to say, a vessel equipped and armed, then such a direction in my opinion would be erroneous; and I cannot help thinking that a jury would understand the lord chief baron to mean that.

Again, the lord chief baron said that he would not leave to the jury the question of what service the vessel was intended for. This, I think, should have been put. It may be that the lord chief baron thought, not that it did not arise or become material in any event, but that it might be assumed in favor of the Crown as the facts were in evidence, for he proceeded to say that the question was whether the vessel was built or in the course of building. If the jury thought, as the lord chief baron seems to have thought, that the ship was not completely built, and therefore no equipment or fitting out could have been even commenced, the question of intent would not arise. But that was a question for the jury; and it was only in the event of their finding that question in one way, that the question of the service for which the vessel was intended became immaterial.

Further, it is complained that the lord chief baron directed the jury that equipping, fitting out, and furnishing all meant the same as arming. This we now understand him to say he did not do, but only expressed his opinion that they did.

It is clear, however, that the learned lord chief baron did not direct the attention of the jury to the point whether there was an equipment (completed or attempted) of a character doubtful in itself, but still capable of being used for war, which was to their satisfaction established to be an equipment for war by the evidence of the intent of the parties. And this, I think, should have been left.

I adopt the proposition stated by the counsel for the Crown, that a summing up which, fairly considered, has on the whole a tendency to mislead a jury upon a question

of law, on which they ought to be guided by the opinion of the judge and not to form their own opinion, is open to the objection of misdirection.

As was remarked by the attorney general in his able argument, the learned lord chief baron was obliged to deal on the trial with a difficult subject, and, as was said by the attorney general, it is not wonderful if in some things his lordship may have omitted to have made observations which he would have made, or may have made observations which he would not have made, had it been otherwise. Yet, I am not prepared to say that I find in the summing up of the lord chief baron, delivered as it was under these circumstances of difficulty, any statement of law which is in my judgment absolutely erroneous. But it does seem to me that the explanation given of an extremely difficult and obscure act of Parliament was not so full or so clear as a jury ought to have had in a case of so great importance, and certainly not so full as the jury will have if a new trial is granted, now that the whole subject has been so amply and so ably discussed. I think also that there are expressions in the summing up which a jury would probably have misunderstood; so that, on the whole, I think we ought to grant a new trial on the ground of misdirection, including, as I do in that term, inadequate direction, and expressions calculated to mislead the jury.

Taking this view, I need not revert to the question whether the verdict was against evidence; or whether, supposing it to be so, the present case ought to be assimilated to a penal action, in which case the rule is that a new trial is never granted *solely* on the ground that the verdict is against the evidence. I expressly refrain from offering any opinion whether the verdict found by the jury in this case was or was not, in my judgment, the right one. But I say that it was an unsatisfactory verdict, because it may have proceeded upon a misapprehension of the law and of the questions to be decided.

It is a satisfaction to me to find that my brother Pigot has arrived, in the result, at the same conclusion with myself, although his reasons for doing so may not be entirely the same as my own. It is also a satisfaction to me to know that, although I differ from the lord chief baron and my brother Bramwell in the result, there are many broad points of agreement between us. I agree with them in thinking that what this statute forbids is an equipment for war. I agree with them in thinking that the main object of the statute was to prevent our ports being made stations of hostilities. Our difference appears to be this, that they think the equipment must be intended to be completed, so that the vessel, when it leaves our port, shall be in a condition at once to commit hostilities; whilst it seems to me that in the fair and reasonable meaning of the words used, another case is included, viz, where the equipment, not being complete to that extent, is yet capable of being used for war, and the intent is clear that it is to be used for war. I say that the fair and reasonable meaning of the words includes that case, and that we should judicially construe the act to include it.

It may be said that the manner in which I have considered this case, by a minute scrutiny of the words of the act, is a mere lawyer's method of viewing the matter; that in a case of this kind it is our duty to take a broader view; to take into our consideration the principles of international law, the duties of nation to nation, and even the opinions of great statesmen on those duties. I, for my part, have no ambition to decide cases in this court in any other capacity than that of a lawyer. In days long past, judges, I think, often invaded what we now consider the sole province of the legislature. They interpreted statutes to include cases which they assumed to think ought to have been included; thus not merely constituting themselves legislators, but generally also legislators *ex post facto*. That, I think, will never be done again. As long as acts of Parliament are drawn as they are now, the office of construing them will be no sinecure, though we have but to interpret the law, and not to make it. If it is for the interest of the nation that the law should be other than we interpret it—if our construction of this act of Parliament may endanger the peace of the nation—then I say that it may be the duty of Parliament to enact a new law; but it is not our duty to look elsewhere than at the present statute for an interpretation of it.

MR. BARON PIGOTT. The rule for a new trial in this case has been drawn up on seven different grounds. We have, however, to consider them as practically reduced to two; and accordingly, the arguments were directed to impeach the general verdict which was found for the claimants of the ship, the *Alexandra*: first, upon the ground that the lord chief baron had misdirected, or had insufficiently directed the jury in point of law; and secondly, that the verdict was against the weight of evidence.

The material facts disclosed in evidence on the trial were, that the vessel, the *Alexandra*, was built by Messrs. Miller, who stated that she was for Messrs. Fraser, Trenholm and Company, agents of the southern confederacy; that she was launched in March, and at the time of the seizure, on the 5th of April, the defendants' workmen were variously engaged in fitting her with stanchions for hammock nettings; that her three masts were up, and had lightning-conductors on them; that she was provided with a cooking apparatus sufficient for one hundred and fifty or two hundred people; that her build was apparently for a gunboat with low bulwarks, over which pivot guns could play; and her hatches were too small for merchandise; in fact, that she was not

qualified for mercantile purposes. No evidence was called for the defense. The contention upon the trial, as upon the argument before us, was that, upon the true construction of the seventh section of the statute, the foreign enlistment act, the evidence disclosed no illegal act done or attempted in reference to this vessel which worked its forfeiture.

The lord chief baron's direction to the jury is before us at full length, and I proceed to consider the objection to its sufficiency, and the arguments which were addressed to the court thereupon. It is clear that the construction of a statute is for the judge, and there are no doubt many statutes which are so unambiguous in their language that it is quite sufficient to read the words to the jury without explanation or comment. A judge has a right to assume that the jury whom he is directing are persons of ordinary intelligence, and in his direction to them to treat them as such. But there are a variety of statutes of quite a different character, and which persons of intelligence, not accustomed to the consideration of the artificial language in which acts of Parliament are frequently framed, require to have fully and carefully explained. In such cases the duty lies upon the judge to give the necessary explanation, and to evolve the question of fact which the jury are to decide. The statute in question is, in my opinion, clearly one of this class, and we have to see whether, upon the whole, the jury were sufficiently directed on the true meaning of the seventh section of the enlistment act, so that they would clearly understand the issues of fact which they had to try. In order to determine this it is necessary to ascertain the construction which the seventh section ought to bear, and I propose to examine the arguments which were addressed to the court to guide us in our decision.

As to one class of these arguments, I felt great doubt whether they could be legitimately addressed to us for the purpose of expounding a municipal statute; and certainly I do not consider myself at liberty to look upon them in any other light except as matters of history as to the state of our law at the date of this statute. I allude to the debates in Parliament, the correspondence of English and American ministers of state, Mr. Hamilton's rules of 1793, and the writings of modern historians.

But a second class of argument was founded on the state of international obligations as between neutral and belligerent nations, and which it was argued the legislature, by the seventh section, intended to enforce upon the subjects of the Crown.

This argument necessarily embraced a very wide field, and no doubt those obligations are the foundation of this legislation; but, in my opinion, they are pushed too far, if urged as the necessary limit of a municipal enactment. A belligerent would have no right to complain of a neutral state so long as it is not affected by hostile acts, or until aid be in some way actually afforded to its adversary; but the neutral state as between itself and its own subjects may find it expedient so to legislate that between the attempt to commit acts of hostility and the completion of them by their subjects, an opportunity would be afforded to arrest such completion; and where the object is a prevention of mischief on which the peace of the country is supposed to depend, I should expect *a priori* that such would be the course adopted. Be this as it may, the consideration of the subject can for the present purpose be serviceable at the utmost where the language employed in legislation is in itself really ambiguous, and I think that it cannot be carried to the extent of creating an ambiguity which does not otherwise appear. It is not necessary for me to determine whether this branch of argument is otherwise well founded by a comparison of international obligations with the actual provisions of the act, for it is admitted that, to some extent, the latter go beyond them.

A third head of argument was founded by both sides on the language and provisions of the American statute. Doubtless it had the same general object, is framed *in pari materia*, and was the forerunner of our statute. In these circumstances I see no objection to making a comparison of the language of the two, and seeing whether by their marked agreement or variance any doubtful meaning of the English legislature can be more certainly ascertained. And in the same way the authorities of the American courts may serve to guide, though not to govern, our judgments. Now, with reference to the corresponding section of the American act, as compared with the seventh section of the English statute, it is impossible, on the most cursory glance, not to perceive that, although the former was (judging by the similarity of language) taken as the model of the latter, yet that our legislature has made very material variations from it. Of these the very prominent ones are the use in the English statute of the disjunctive for the conjunctive, the extending of the prohibition to equipping transports or store-ships, the addition of the words "or in order" to "with intent," and the omission in the forfeiture clause of the materials for building a ship—alterations which can only have been made with some object at least.

As regards the American authorities, the case of the United States *vs.* Quiney, in 6th Peters's Reports, is most relied on by the Crown. The decision must be admitted to be open to some criticism. There was in that case certainly evidence of hostile preparations, and neither of the questions answered by the court is exactly in point. But it does nevertheless appear from several parts of the judgment that the court would, if

necessary, have gone the length of holding, as, indeed, they say in terms, "that the offense consists principally in the intention with which the preparations were made;" and again, "It is the material point on which the legality or criminality of the act must turn, and decides whether the adventure is of a commercial or warlike character." From this and other passages in the judgment I infer that they were disposed to disregard altogether the nature of the preparations.

I pass now, however, to the head of argument addressed to us by both sides, and on which, in my opinion, the judgment of the court must be mainly based, viz., on an examination of the statute itself, its object, preamble, and enacting language; and I own that, were it not for the great difference of opinion which seems to exist, I should not have thought it so difficult to construe as it would thence appear to be. It is a municipal act, and is to be construed according to the ordinary import of the language employed. This was the rule of construction stated by Baron Parke in *Lyde vs. Barnard*. The rule of construction is also clearly stated in the *Sussex Peerage* case, by Chief Justice Tindal, thus, "If the words are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense; the words themselves do in such case best declare the intention of the lawgiver." And I confess I approve, as applicable to this statute (as to the character of which I agree with the remarks made by my Brother Channell, though I say it now with deference after the lord chief baron's observations) of Lord Coke's rule in *Bonham's* case where he says, "The good expositor makes every sentence have its operation to suppress all the mischiefs; he gives effect to every word in the statute; he does not construe it so that anything should be vain and superfluous nor makes exposition against express words."

Bearing in mind these rules of exposition, I find that the foreign enlistment act plainly recites the mischief, and the cause of it which it is designed to prevent, viz., "The fitting out and equipping and arming of vessels by her Majesty's subjects without her Majesty's license, for warlike operations, which may be prejudicial to and tend to endanger the peace and welfare of this kingdom." This language is tolerably plain, and I pass on to consider the enacting clause, where the mode of prevention is stated.

The language of it is varied, and as I think in some respects studiously varied from that of the preamble. There is introduced into it the additional word "furnish;" the copulative "and" is changed into the disjunctive "or," to connect the four much debated words, instead of the expression "fitting and equipping and arming of vessels for warlike operations," which is the language of the preamble, the expression is "equipping, furnishing, fitting out, or arming, of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, &c., as a transport or store-ship, or with intent to cruise or commit hostilities," &c. It is agreed on all hands that the latter words, "with intent," may be taken as omitted here. The clause is also directed not only against the principal offenses stated in the preamble, but also against any attempt to commit them, and also against the knowingly aiding, assisting, or being concerned in them; offenses expressly, of course, mentioned for the purpose of the forfeiture. The enacting clause, therefore, is more extensive than the preamble, but I take it to be a clear rule of construction, that where that is the case effect must nevertheless be given to the larger words of the clause.

It would be unnecessarily lengthening my judgment if I attempted to review all the arguments on this part of the case. I shall, therefore, confine myself to noticing some of them, in the course of stating my own views. And first, I do not think that the legislature have used any apt words to prohibit the building a hull of a vessel as contradistinguished from equipping it for sea, and for other purposes. It seems to me that if such had been the intention, it would have been done plainly by the use of the word "build" before the expressions "equip," &c., and that it is impossible for a court to guess that such might have been the meaning, as was argued by the attorney general, from the use of so doubtful an expression as that of "fit out," rendered more doubtful for such a purpose by its collocation in the sentence, not standing even in the position which it occupies in the American statute, namely, first, but placed among expressions plainly signifying acts done on a vessel in existence. And when reference is made to the forfeiture clause, it is to be observed that neither the "hull" nor the "building materials" are enumerated there; but, as before observed, the latter words which were to be found in the American act appear to be studiously omitted, and no equivalent ones are substituted. The subject was one too prominent to have escaped the observation of the framers of the statute, and I am led therefore to infer that the legislature had reasons for not interfering with the ship-building trade, as such, in contradistinction to the business of equipping ships. It may have been because of its extent and importance, or the legislature may have hoped to prevent the mischief aimed at by less objectionable means, or (and I think that most probable) it may have considered that ample time would be afforded between the completion of the hull and the equipments necessary to enable it to leave the port, during which its destination being ascertained, if illegal, a seizure could be effected. Whether I am right in these suggestions or not,

I find no distinct prohibition against the building of a hull or vessel, and I feel bound, therefore, to say, that by building merely, no forfeiture is incurred. But I am of opinion that any act of equipping, furnishing, or fitting out done to the hull or vessel, of whatever nature or character that act may be, if done with the prohibited intent, is expressly within the plain language, and also within the evident spirit of the statute. The intent I take to mean an intent of the principal (who has control of the ship) having directly for its object the employment of the vessel by a foreign state, and in the equipper a like intent, and with such intent a contributory equipment of some kind necessary to such employment, and it is evident that the intents need not be derived solely from the nature of the equipments, but may be proved *aliunde*. It may not be easy to define in all cases the exact point at which the building of the hull ends and the act of equipping or fitting out begins, but that in each case would be for a jury to decide.

I will now state some reasons for the construction at which I have arrived. I feel bound where the legislature has used different expressions having different meanings, and has coupled them with the disjunctive "or," not to treat them as if they were coupled with the copulative "and," or as merely redundant expressions, unless I am compelled by the context to do so, but to give effect to each of them so far as they will admit of it, unless I thereby find that manifest injustice or absurdity will result. I do not find that in the present case, and I therefore do suppose that the legislature attached different meanings to the several expressions. I further think it impossible to believe that the word "and" in the American statute should have been so pointedly changed to "or" by our legislature without some object.

It was argued that the four expressions are to be construed as *ejusdem generis*; the word "arm" being the distinctive feature. But, in my judgment, the use of so many as four different words can hardly have been meant to express precisely the same thing; and it is obvious that the words "equip, furnish," and "fit out," are used in the section, for some purposes at least, to signify something different from the word "arm." For instance, as applicable to a transport or store-ship, they are so used. Then these words being there used, as they must be, to signify peaceful equipments, it would seem a very forced construction to say that they exclude the same meaning when applied to a ship intended to commit hostilities, although that ship equally requires peaceful equipments with a transport or store-ship.

But it was urged, and more particularly by Mr. Mellish, that the several expressions may have a several effect given to them, only that their meaning should be restricted to equipments of a distinctive character, according to the nature of the ship; and therefore that a ship intended for war must have warlike equipments.

I think that this construction would in effect be introducing into the statute words that are not to be found there, which is quite as objectionable as striking out words which are there, or it would be changing the collocation of the language for the purpose of forcing its meaning; for it is not said in the statute that those equipments alone are unlawful which shall make the ship fit in all respects for its purpose, whether as a store-ship or to commit hostilities; but those equipments are unlawful which are supplied with intent that the ship shall be employed in the service of a foreign state, and then the several services in which it shall not be so employed are enumerated, the service of committing hostilities being one of them.

Again, it is admitted by the claimants' counsel that a complete equipment is not necessary to the violation of the statute, but that a partial one is sufficient, if of the distinctive kind; and further, that as regards a war ship any warlike equipment, even short of arming, is forbidden. The consequence would be that you may not put one gun carriage or gun on board without a violation of the statute, and yet by such partial warlike equipment the ship would be no more in a position to commit hostilities than she would if she was only peacefully equipped. But it seems to me that a strange result would be produced if we were to hold that the statute intended to prohibit only warlike equipments in a ship of war, founded on the words "equip with intent to commit hostilities," which was Sir Hugh Cairns's argument; for that reasoning would drive us to say that only such warlike equipments are forbidden as would enable the ship to commit hostilities, as was argued in Quincy's case. The consequence would be that this vessel might have its pivot guns on board, and yet no offense be committed against the statute, because without the cannon balls and powder her equipment would still be useless for actually committing hostilities; so that if the intention really were to go out of port equipped with a full armament, but not to receive her ammunition on board until she was out of the English waters, the seventh section would still not be violated.

Again, with reference to the necessity of distinctive equipments, I have not heard that there are any such applicable to a store-ship, except the ordinary peaceful ones which a merchant ship requires. And if the argument of distinctive equipments will not hold as to all the several ships pointed out by the statute, I do not think that I have a right to apply it arbitrarily to one class, viz., to ships equipped with intent to commit hostilities.

As regards the meaning of the several expressions, and the necessity for the use of

them in the statute, it may be that the word "equip" in its largest sense would alone have sufficed; but probably an interpretation clause would have been requisite, as it certainly means different things when applied to different subject-matters. In Falconer's *Marine Dictionary* it is defined as "a term frequently applied to the business of fitting a ship for sea or arming her for war," and I think, therefore, the other expressions may be regarded as in the nature of words of interpretation of the possibly ambiguous expression "equip," and meaning the same as if the words had been a prohibition of equipment, including ships' furniture of all kinds, and arms. But because the word "arm" is added to the others in order fully to express a complete description of the equipments, peaceful and warlike, of a war vessel, I feel it impossible to say that I ought so to construe the section as to deprive the other expressions, to which it is superadded, of their ordinary meaning. I do not therefore in the result find any reason for this distinctive construction. In my view the prohibited intent is the main ingredient, and any act of equipping done in furtherance of that intent will constitute the whole offense; for assuming the same intent to be present in two persons, I do not see the difference between the agent who did put on board this ship the cooking apparatus sufficient for one hundred and fifty or two hundred men and fitted the stanchions, and the man who might have put on board a pivot gun to have played over the low bulwarks when ammunition should be supplied by some one afterward. Both would be acting with a common object, and the part contributed by each would equally conduce to the fulfillment of it.

Before I could come to the conclusion contended for by the claimants in the absence of plainer words to that effect, I must believe that the legislature, when enacting a forfeiture and power to arrest a vessel, meant to deprive itself of all reasonable opportunity for exercising that power, and that too when the avowed object is to prevent the vessel leaving the English port, and not merely to punish offenders by indictment afterward. Upon this restricted construction it is practically plain that the statute would be set at defiance in one of two ways, either as was done by the *Alabama*, whose armaments went out in another ship, or by completing the peaceful equipments first, and then putting on board the guns as the last act in port, probably occupying a few hours at most, and giving no opportunity of seizure and prevention. In fine, I see no more reason for saying that the ship must, in order to violate the statute, be so equipped in our ports with arms as to be ready to commit hostilities on leaving them, than for saying that she must be sufficiently manned also, without which she would certainly not be in such a condition. I cannot so restrict the statute by construction without feeling that I should virtually repeal it.

In arriving at my construction I do not feel pressed by Sir Hugh Cairns's argument of inconsistency in drawing so sharp a line between the building and the equipping, for the same might be said of the distinction which does exist between selling an armed vessel to a belligerent and arming one with the requisite intent under an order of the same purchaser; the line is equally sharp, and the only difference is in the place where it is to be drawn. Indeed, this argument is rather to be addressed to the lawgiver than to the expounder, if there be inconsistency in the legislation. Admitting, as I do, that there is inconsistency in the state of this law as to what is lawful and what is not, I believe nevertheless that the lesser amount of inconsistency is incurred by adhering to the ordinary meaning of the language employed as I have above construed it.

Upon this view of the statute, in my opinion, the proper direction to the jury would have been that they should first look to see whether the equipper had had the intention which I have above mentioned, together also with the intent of the principal as explained by my brother Channell; and, secondly, whether with such intent they had done any act toward equipping, furnishing, or fitting out the ship, beyond the mere work of building the hull of the vessel, or had attempted or endeavored so to do; and I agree with the definition of the attempt which my brethren have given. But looking at the whole of the direction of the lord chief baron, (which I need not criticise at length after my brother Channell's judgment,) although his lordship does appear to have left the question of equipping, furnishing, or fitting out to the jury in the alternative, yet I think there are other passages of the summing up which are inconsistent, and which would have a tendency to mislead them. I need not recapitulate them, as my brother Channell has done so at full length, and I therefore conclude by saying that I think that the jury should have been distinctly told that the intent as before defined being established to their satisfaction, any act of equipping in furtherance of such intention would be unlawful within the meaning of the statute.

I am also further of opinion that, even if my construction of the statute be incorrect, and if it ought to be construed as Mr. Mellish contended, that is, as prohibiting only equipments of a distinctive character, yet that upon the evidence above stated there was sufficient upon which to direct the jury that the claimants had supplied distinctive equipments within that meaning of the act. The evidence to which I allude is the proof of the fitting stanchions for hammock racks and the cooking apparatus for a crew of one hundred and fifty or two hundred people to a war vessel. I do not find that

such direction was given, and I am therefore of opinion that, upon the ground of an insufficient direction, there ought to be a new trial.

On the other ground, that the verdict was against the evidence, I agree with my brother Channell, that it is unnecessary for me to decide it, as I think that the rule should be made absolute on the ground of insufficient direction.

MR. ATTORNEY GENERAL. My lord, the court being equally divided in opinion, if it is your lordship's desire that a judgment should be given, I believe it is necessary that some arrangement should be made for that purpose, that by the consent of one of the judges who has delivered an opinion, the rule should be either discharged or made absolute, otherwise we should have no judgment at all which could be taken anywhere else.

LORD CHIEF BARON. The officer of the court, the Queen's remembrancer, says, that according to the practice you would have an appeal either way; but it would, perhaps, be better if there were an apparent judgment of the court, deciding one way or the other, in order to remove every possible doubt.

MR. BARON PIGOTT. Then I will withdraw my judgment.

MR. BARON CHANNELL. According to the rules which the court made on the opening of this argument, in order to assimilate this case to an ordinary civil action, when a rule for a new trial drops on the ground that the court is equally divided, there is a right of appeal.

LORD CHIEF BARON. My brother Pigott withdraws his judgment.

MR. BARON PIGOTT. Yes.

LORD CHIEF BARON. Then the rule will be discharged.

MR. ATTORNEY GENERAL. That is quite enough, my lord.

IN THE HOUSE OF LORDS.

Present: The Lord Chancellor, Lord Cranworth, Lord St. Leonards, Lord Wensleydale, Lord Chelmsford, and Lord Kingsdown.

BETWEEN HER MAJESTY'S ATTORNEY GENERAL, appellants, and HERMAN JAMES SILLEM AND OTHERS, claiming the Alexandra, respondents.

Decisions of the lords sitting on appeal.

FRIDAY, March 11, 1864.

LORD CHANCELLOR. My lords, this appeal depends on the question whether the rules made by the Court of Exchequer on the 4th of November, 1863, are warranted by the power contained in the twenty-sixth section of the statute of the twenty-second and twenty-third year of the Queen, commonly called the Queen's remembrancer's act.

The second common law procedure act, which passed in the year 1854, contains many important enactments with reference to the jurisdiction of the superior courts of common law, and some of the most important are the provisions that create new rights of appeal. In jury trials at common law grave questions frequently arise, and are decided on motions for a new trial or on rules to enter a verdict or nonsuit; but from the decisions of the court so given there was not before the act of 1854 any right of appeal.

The creation of a new right of appeal is plainly an act which requires legislative authority. The court from which the appeal is given and the court to which it is given must both be bound, and that must be the act of some higher power. It is not competent to either tribunal, or to both collectively, to create any such right. Suppose the legislature to have given to either tribunal, that is, to the court of the first instance and to the court of error or appeal respectively, the fullest power of regulating its own practice or procedure, such power would not avail for the creation of a new right of appeal, which is in effect a limitation of the jurisdiction of one court and an extension of the jurisdiction of another. A power to regulate the practice of a court does not involve or imply any power to alter the extent or nature of its jurisdiction. Accordingly, it was necessary in the act of 1854, not only to give new rights of appeal, but to define and bind certain courts to entertain the appeal so given, and this is done by the thirty-sixth section of the act, which declares that the court of error, the exchequer chamber, and the House of Lords shall be courts of appeal for the purposes of the act.

The common law procedure act of 1854 was, like the act of 1852, limited to the superior courts of common law, and from the manner in which the act was expressed these words intentionally excluded that court which is called the revenue side of the court of exchequer. It required, therefore, another exercise of legislative authority to make the special provisions of the act of 1854 which had created new rights of appeal in the other courts applicable to suits as between the Crown and the subject in the court on the revenue side of the exchequer. In making the orders now in question the

barons of the court of exchequer have assumed that a discretionary power to exercise this legislative authority or not, and thereby to confer or to withhold this important benefit of new rights of appeal, has been given to them by the twenty-sixth section of the act of 1859. If the legislature has done this it has done a thing which is very irregular, and which antecedently would seem to be very improbable.

It is not reasonable to suppose that in matters affecting the taxation of the subject the legislature would abdicate its own functions, and delegate to the barons of the exchequer the power of determining at their pleasure whether in certain cases there should or should not be a right of appeal as between the subject and the Crown.

This improbability is much increased when attention is directed to the particular provisions of the statute in question, namely, the Queen's remembrancer's act. The tenth section embodies and applies (with some slight differences) to the revenue side of the court the provisions as to error and appeal contained in the forty-sixth section of the common law procedure act of 1852, and the thirty-second section of the act of 1854.

New rights of appeal are created and regulated by the twelfth, thirteenth, fourteenth, and fifteenth sections. By the sixteenth section special legislative provisions as to the examination and attendance of witnesses, together with the provisions contained in the forty-sixth, forty-seventh, forty-eighth, and forty-ninth sections of the act of 1854, are expressly extended to suits and proceedings on the revenue side of the Court of Exchequer; and in the eighteenth and nineteenth sections are contained express enactments regulating proceedings in error on the revenue side of the court, and embodying the one hundred and forty-sixth and one hundred and forty-seventh sections of the act of 1852; and by the twentieth section the power of appealing to a court of error by means of a bill of exceptions is for the first time created on the revenue side of the court.

Suits, therefore, between the Crown and the subject on the revenue side of the exchequer are by these express enactments put on the same footing with respect to proceedings in error as suits between subject and subject in the courts of common law, with the exception only of the right of appeal from interlocutory orders given by the thirty-fourth and thirty-fifth sections of the act of 1854. It is difficult to resist the impression that these last-mentioned rights of appeal were intentionally omitted by the legislature as not being expedient in revenue cases, but it is much more difficult to accept the proposition of the Crown, that these rights were left by the legislature to be conferred or not, at the pleasure of the chief baron and two or more barons of the Court of Exchequer. These improbabilities and difficulties must of course yield to any enactment expressly declaring that such is the intention of the legislature, but they are of sufficient weight to render it necessary that the language of such alleged enactment shall be clear and unequivocal, and not admit of any other reasonable construction.

With these observations we come to the construction of the twenty-sixth section of the statute. It contains two distinct powers given to the lord chief baron and two or more barons of the court.

By the first power they are authorized to make rules and orders as to the process, practice, and mode of pleading on the revenue side of the court. Here the word "practice" is used in its common and ordinary sense, as denoting the rules that make or guide the *cursum curiæ*, and regulate the proceedings in a cause within the walls or limits of the court itself. Under this power any rule might be laid down by the barons for the guidance of their own proceedings that did not require express legislative sanction. By the second power conferred by the twenty-sixth section, the lord chief baron and two other barons are authorized to extend, apply, and adapt to the revenue side any of the provisions of the common law procedure acts of 1852 and 1854, and any of the rules of pleading and practice on the plea side as may seem to them expedient for—that is, for the purpose of making the "process, practice, and mode of pleading on the revenue side as nearly as may be uniform with the process, practice, and mode of pleading on the plea side."

First, it was admitted on all hands, and if not, it is clear, that the provisions in the acts of 1852 and 1854, which may be thus extended, applied, and adapted, must be provisions relating to process, practice, and mode of dealing. Uniformity of process, practice, and pleading on both sides of the court is the object of power, and defines its extent.

Secondly, it is very difficult to give to the words "process, practice, and mode of pleading," in this second power, a different meaning or extent of signification from that which they bear in the first power given by the prior part of the section.

Taking then the word "practice" as equivalent to the *cursum curiæ*, or regulations of proceedings within the court itself, the question is whether the thirty-fourth, thirty-fifth, and thirty-sixth sections of the act of 1854 can with any propriety of language be denominated provisions or rules respecting process, practice, and mode of pleading. This is a question of verbal nicety depending on nice shades of meaning in a word. The thirty-fourth, thirty-fifth, and thirty-sixth sections of the act of 1854 create, as I

have said, new rights of appeal. An appeal is the right of entering a superior court, and invoking its aid and interposition to redress the error of the court below. It seems absurd to denominate this paramount right part of the practice of the inferior tribunal. The mode of proceeding may be regulated partly by the practice of the inferior, and partly by the practice of the superior tribunal, but the appeal itself is wholly independent of these rules of practice. The right to bring an action is very distinct from the regulations that apply to the action when brought, and which constitute the practice of the court in which it is instituted. So the thirty-fourth and thirty-fifth sections of the act of 1854, which create new rights of appeal, and the thirty-sixth section, which defines and binds certain courts to receive and determine such appeals, cannot with any accuracy or propriety be termed provisions which relate to process, practice, or mode of pleading, either, in the court appealed from or that to which the appeal is to be made. They are enactments creating new relations between certain courts in cases which are defined, and they are as distinct from rules of practice as international law is distinct from municipal.

On reading the rules in question which profess to have been made under the authority of the twenty-sixth section no one using the common language of lawyers would call them provisions relating to the practice of the Court of Exchequer on the revenue side. For the third rule is that the court of error, the Exchequer Chamber, and the House of Lords shall be courts of appeal for this purpose; that is, for the purpose of the appeal given by the first and second rules; and the sixth, seventh, eighth, and ninth rules prescribe the duty and define the authority of these courts of appeal. These rules are so many legislative enactments purporting to create a new jurisdiction in the Court of Exchequer Chamber and House of Lords, and prescribing the mode in which such new jurisdiction shall be exercised. It is simply an incorrect use of language to call such enactments provisions respecting the process, practice, or mode of pleading in the Court of Exchequer; but, unless they can be properly and strictly so denominated, there is not in my opinion any authority to make such rules conferred by the twenty-sixth section of the Queen's remembrancer's act.

The principal argument of the attorney general was, that the words "process, practice, and mode of pleading" were equivalent to the word "procedure," and that the word "procedure" denotes the whole course of a cause, from its commencement in the court of first instance until its final adjudication in the ultimate court of appeal, and he then contends that a provision giving a new right of appeal may be properly termed a provision relating to the procedure of a cause. I cannot accept either of these two positions. The words "process, practice, and mode of pleading" are not used in the abstract, but always with reference to some court or courts, and so used they have a well understood and definite meaning. They are used in the twenty-sixth section in connection with the plea side and revenue side of the Court of Exchequer, and properly denote the proceedings in a cause on either side within the walls of that tribunal. They have no extra territorial operation; but if they receive the larger construction of the attorney general it would follow that under the twenty-sixth section the barons of the exchequer would have power to make rules as to procedure in the House of Lords, which would be absurd.

It was also urged by the attorney general that the proceeding to error is now made a step in the cause, that is, a step in procedure, and if procedure be, as he contends, equivalent to process, practice, and mode of pleading, it is a step within the meaning of those words. The fallacy of this ingenious verbal argument lies, as I have already observed, in taking the word "procedure" in the abstract, and substituting it for "process, practice, and mode of pleading, also taken abstractedly; that is, taken in a sense and manner in which they are never found in the acts in question. The words "step in the cause" are used, as is well known, for the purpose of denoting that in future it should be necessary to sue out a new writ for the purpose of entering a court of error.

But it has been further contended that inasmuch as by the twentieth section of the Queen's remembrancers act the proceeding by bill of exception is extended to the revenue side, by which any error or omission in the ruling of a judge at the trial may be brought before a court of error, the giving of an appeal from the judgment of the court in banco on the same question of error in the ruling is no more than a regulation of form, and not the introduction of a new right of appeal.

But the observation is not correct in point of fact, for the bill of exceptions is to the ruling of the judge at the trial; whereas the appeal created by the thirty-fifth section of the act of 1854 is from a different judgment, viz, the decision of the court in banco. But the answer to the whole of this argument is, that although the bill of exceptions was a well-known proceeding in the courts, except on the revenue side of the exchequer, anterior to the year 1854, yet the legislature deemed it necessary to create the new rights of appeal which are given by the thirty-fourth and thirty-fifth sections of the act of 1854 by express enactments for the purpose. This argument, therefore, by bringing into immediate contrast the express mention of the proceeding by bill of exceptions, with the total silence of the legislature as to the appeals given by the thirty-fourth and thirty-fifth sections of the act of 1854, serves to confirm the conclusion, that the legis-

lature deliberately abstained from extending to suits on the revenue side the provisions contained in those sections.

It was strongly contended by the respondents, that even if the barons of the exchequer had power to make the rules in question, they had no power to make them apply to pending proceedings, and that the attempt to do so was unjust.

This argument is not in my opinion well founded. Many of the enactments contained in the Queen's remembrancers act are so worded as to be applicable at once to pending proceedings. If, therefore, these rules are warranted by that statute, there can be no injustice in making them apply to pending proceedings so long as they apply equally and impartially to both sides.

Still it is a subject of deep regret that any rules should have been made expressly with a view to the determination of a particular cause. Four years had elapsed since the passing of the Queen's remembrancers act, and the necessity of these rules had never occurred to the barons of the Court of Exchequer. On the eve of the argument of the motion for a new trial in this important case the rules in question were made without the time necessary for due deliberation. The result is, that the efforts made to settle a question of the gravest importance, and most essential for the guidance of the government of the country, and regarded with great expectation, have been rendered abortive, or, rather, to speak more correctly, the *mons parturienti* of this great cause, raised with so much labor and expense, will produce nothing but the ridiculous issue of some discordant opinions on the meaning of the word "practice."

I therefore have to move your lordships that the appeal of the Crown be dismissed, with costs.

LORD CRANWORTH. My lords, on the argument of this case at your lordships' bar two questions were raised: first, had the Court of Exchequer the power to make the rules in question? secondly, if they had, could they make them so as to operate on a defendant who had already obtained a verdict?

The first question depends entirely on the twenty-sixth section of the 22d and 23d Victoria, chapter 21. That section contains two members. I do not consider it necessary to discuss what rights the court had under the first, but by the second part of the clause the chief baron and two or more barons are authorized from time to time, by any rule or order, to extend any of the provisions of the acts of 1852 and 1854 to the revenue side of the court, as might seem to them expedient for making the practice on the revenue side of the court as nearly as might be uniform with the practice on the plea side.

By the second of the rules of the 4th of November 1854 it was provided (among other things) that in all cases of motions for a new trial, upon the ground of misdirection by the judge at the trial, if a rule to show cause be granted, but afterward discharged, then the party decided against may appeal, if there is a difference of opinion among the judges, or if the court gives leave to appeal.

There is a provision in the act of 1854, section 36, giving to the suitor this power of appeal in such motions on the plea side of the court. Therefore, looking only to the words of the statute, the rule was certainly authorized, if it would tend to make the practice on the revenue side of the court more nearly uniform with that on the plea side.

Did then the alteration thus introduced by the second rule tend to make more uniform the practice on the two sides of the court? I cannot doubt that it did. If by the word "practice," as used in the statute, we are to understand the whole course of procedure from the commencement of a suit to its close by final judgment and execution, there can be no doubt that under the rule in question the practice on the revenue side was made more uniform with that on the plea side. In fact, the practice so understood was made the same on both sides of the court. I strongly incline to think that in construing a remedial act like that now under consideration, we may fairly adopt this liberal interpretation of the word "practice." When the legislature sanctions the doing of certain acts for the purpose of making the practice on the revenue side of the court more uniform with that on the plea side, it is not unreasonable to understand it as meaning the practice in revenue causes, that is, the practice in every stage of their progress from the commencement to the end. But in my view of the case it is not necessary that I should rely on this more extended sense of the word "practice," for, even supposing the "practice" referred to in the statute to be confined to that in the Court of Exchequer itself, and to have no reference to the mode in which the cause is to be dealt with after it has left that court, still I think the rule in question tended to make more uniform the practice on the two sides of the court. I must here remark, that the power conferred by the twenty-sixth section is not a power, as was assumed at times in the arguments, to introduce clauses relating to process, practice, or pleading, but a power to introduce any sections which may tend to make the process, practice, and pleading on the two sides of the court more uniform.

On the plea side, a suitor has two modes of bringing any misdirection of the judge at the trial under the review of the courts of error. He may tender a bill of exceptions at the trial before the jury have delivered their verdict, and then by proceeding in error bring the question as to the ruling of the judge before the successive courts of

error; or, after verdict, he may move the Court of Exchequer for a new trial, and if dissatisfied with the judgment there given he may appeal. Whichever course is taken, the question whether the judge has ruled according to law may be subjected to the review of the Exchequer Chamber, and afterward of the House of Lords.

On the revenue side of the court only one of these courses was, before the promulgation of the rules, open either to the Crown or to the defendant. Either party might tender a bill of exceptions, and so bring the matter before the courts of error. But if, instead of taking that course, he preferred to move the Court of Exchequer, after verdict, for a new trial, there was then no mode of questioning in the courts of error the ruling of the judge at the trial.

The effect of the new rules of court is, to enable the party, whether the Crown or a subject, dissatisfied with the judgment of the Court of Exchequer on such a motion, to appeal to the courts of error, thus making the mode of bringing before the courts of error the question whether the ruling of the judge at the trial was correct the same on the two sides of the court.

This may surely be treated as an alteration of practice in the court itself. There are two passages to the courts of error, by either of which a suitor on the plea side may bring under the review of those courts an alleged misdirection of the judge at the trial; the one notoriously inconvenient and hazardous; the other, easy and safe. Before the promulgation of the rules, a suitor on the revenue side could only proceed by the former course. Under the rule in question the latter course is opened to him as to the suitor on the plea side. I think this must be deemed to make the practice more uniform on the two sides of the court itself.

If I am wrong in coming to this conclusion, then I should not think that the rule in question was warranted; for, as I construe the statute, there was no power given to the judges of the court to extend any of the provisions of the two former acts to the revenue side of the court, unless by so doing they would make the process, practice, or mode of pleading on the two sides of the court more nearly uniform. The construction of the twenty-sixth section of the statute seems to me to require that the words at the end of it, which indicate the purpose for which the rules might be made, should be read as applying as well to the power of extending the provisions of the former acts to the revenue side of the court as to the power of so extending the rules of pleading and practice on the plea side of the court. In the further observations, therefore, which I am about to make, I must assume that the rules in question did tend to make the practice on the two sides of the court more nearly uniform.

But even supposing that to be so, still it was said there are considerations which ought to satisfy your lordships that no power of making such rules was intended to be conferred on the judges; first, because it is absurd to suppose that it could have been intended to delegate to the judges of a court the power of saying that any decision of theirs should be capable of being brought for review before the Exchequer Chamber, and ultimately to this house; and, secondly, because there are clauses in the act itself inconsistent with the hypothesis that any such power was in fact conferred.

On the first ground, I am far from disputing that cases may be suggested in which a strict adherence to the language of a statute whereby powers are conferred on a court or other body would lead to consequences so absurd or inconvenient as to make it necessary to understand the legislature as having used the words in question not in their ordinary sense; but I cannot discover any such necessity here. Suppose the clause authorizing the application of any of the provisions of the former acts to the revenue side of the court had in terms included those provisions which related to appeals. What would there have been absurd or inconvenient in such an enactment? It might have been unusual, but that would have been all; and I know of no principle which justifies us in departing from the ordinary interpretation of words, merely because they confer unusual powers. I incline to think that I should have taken this view of the case, even if there had been no power of bringing under review the ruling of the judge; but here the very question, as to which a right of appeal to the courts of error is given by the rule now under consideration, might have been brought by bill of exceptions under review of the same courts.

Consider the question, first, when the decision of the Court of Exchequer is conformable to the ruling of the judge, and where, therefore, the application for a new trial is refused. In every such case the right of appeal is merely a right in the party complaining of misdirection to bring by a new and less difficult mode before the courts of error the same question which he might have brought before them by a more cumbrous and complicated mode of proceeding, that is to say, a right to proceed by appeal on a case stated, so as to raise the matter in dispute, instead of by bill of exceptions. The rule in such a case is merely the extending to the revenue side of the court of a clause or clauses of the act of 1854 likely to make the practice on the two sides of the court more uniform. It gives to the suitors in causes on the revenue side of the court the same facilities of getting out of the court below, and reaching the courts of error, which are possessed by the suitors on the plea side. It does not give substantially any new

right of appeal; for, looking to substance, not to form, the party appealing is only doing what he might have done by bill of exceptions.

The case, though equally clear, is not so simple where the Court of Exchequer decides against the ruling of the judge, and so awards a new trial. The party dissatisfied with that decision would, independently of the rules, be compelled to go down to a new trial. The judge presiding at that trial would, as a matter of course, state the law to be as it had been settled by the court. The party dissatisfied with that decision might then object to the law so laid down, and call on the judge to state the law to be as it had been expounded by the judge at the former trial, and on this being refused, as it must be refused, he might tender a bill of exceptions, and so bring the question before the courts of error. The effect of the rule in question is to enable him to bring before the court of error, by appeal, the same question which he might have brought before them by bill of exceptions, after incurring the useless and expensive delay of a new trial. Whether, therefore, the Court of Exchequer may have decided against the motion for a new trial or in favor it, the effect of the rule is to enable the suitor on the revenue side of the court, who considers himself aggrieved by the ruling of the judge at the trial, to reach the court of error by the same easy course which is open to the suitor on the plea side.

I am aware that the courts of error on an appeal have larger powers than they can exercise on a bill of exceptions. On a bill of exceptions they have only to say whether there has or has not been misdirection. If there has, the duty of the court of error is simply to award a *reversal de novo*; if there has not, to refuse it; but on appeal to the court of error the court is bound to give such judgment as the court below ought to have given. Now on a motion for a new trial on the ground of misdirection, it is by no means necessarily the duty of the court to grant a new trial, even where there has been misdirection. The court may see clearly that the jury could not have been and were not misled, and then a new trial may be justly refused. Or the court may see that it ought only to be granted on terms, as, for instance, if a material witness has died since the trial, the court may refuse a new trial, unless the complaining party consents to allow the evidence of the deceased witness on the former to be read on the new trial; and many other instances might be adduced. All these circumstances are to be considered by the court of error on an appeal, which would be out of place on a bill of exceptions. But it surely cannot be an argument against the power to make the rule now complained of, that it enables more substantial justice to be done when the case is before the court of error than could have been done independently of the rule.

On these grounds, I have come to the conclusion, that even if the power to grant a right to appeal, where no means previously existed of bringing the matter complained of before the courts of error, would be so unusual and strange that language apparently conferring it must be construed otherwise than according to its ordinary meaning, still here there not only is no such anomaly, but the power conferred is, in fact, only a power enabling the court to authorize its suitors to obtain the judgment of the courts of error more simply, more expeditiously, more cheaply, and more effectually than they could have done under a more complicated course of proceeding.

It was, however, argued for the respondents, secondly, that there is evidence deducible from other clauses of the statute, showing that it was not intended to confer on the judges of the Court of Exchequer the power to make such rules as those now under consideration. This argument rested mainly on the fact, first, that a right of tendering a bill of exceptions is given, but without any power of appeal; and, secondly, that a right of appeal is given by different sections of the act from the decision of the Court of Exchequer in some other cases, and the inference, it was said, is that where a right of appeal was intended it was given expressly; and so that it would be unreasonable to suppose that the legislature meant to delegate to the court the right of declaring whether there should or should not be a right of appeal in cases where no such right is conferred by the act.

In order to estimate the force of this argument, we must assume that but for the other clauses of the act relied on there was authority given by the twenty-sixth section to make the rules in question. If that is so, then the question is whether the other sections relied on make it plain that the power conferred by the twenty-sixth section did not extend to cases to which but for those sections it would have been applicable; in other words, that the twenty-sixth section must be read as if there were in it a proviso declaring that nothing therein contained should be deemed to enable the chief baron and two barons to make any rule empowering any suitor on the revenue side to bring before the courts of error any question as to (*inter alia*) the ruling of a judge at nisi prius otherwise than by a bill of exceptions. Unless the effect of the clauses relied on can be carried to that extent, they do not sustain the argument of the respondents. I cannot attribute to them any such effect. The clause giving the right to tender a bill of exceptions was clearly necessary, for there could have been no right under the twenty-sixth section to extend to the revenue side of the court the provisions of the statute of Westminster. So as to the right of appeal given in cases

of summary proceedings under the legacy duty and succession acts. They were wholly out of the purview of the common-law procedure acts. The only clause really raising any question on this part of the argument is the tenth, which is taken partly from the act of 1852 and partly from that of 1854. Mr. Justice Willes considers that the general powers conferred by the twenty-sixth section of the act of the 22d and 23d Victoria, chapter 21, would not extend to the case contemplated by the tenth section of the same act, or at all events that it is very doubtful whether they would; and he gives his reasons for that opinion. I am far from saying that he is wrong in the view which he has thus taken. But even if he is, all that can be said is that there is one case which has been specially provided for by the legislature, for which, if it had not been provided for, the judges might under their general powers have made adequate provision. I do not feel called on to find reasons why this distinction was made. Perhaps it was thought so important to enable parties to obtain the judgment of the court without the expense of a suit as to make it expedient to introduce this tenth section, formed by uniting together the forty-sixth section of the act of 1852 and the thirty-second section of 1854. Be that as it may, I cannot attribute to the circumstance that express provision is made for giving an appeal in one particular case so much weight as to collect from it that the words of the twenty-sixth section which purport to give a general power embracing that case could not have been meant to have the operation which they would have had if the special enactment had not existed.

On these grounds I have to come to the conclusion that the rule giving a right of appeal from a decision of the court, whether granting or refusing a new trial on the ground of misdirection, was warranted by the twenty-sixth section, as being a rule tending to make the practice on the two sides of the court uniform; that there is no absurdity or inconvenience in construing the words of the act according to their literal import; that so construed, they conferred on the judges of the Court of Exchequer the power to make the rule, authorizing an appeal when the court refused or granted a new trial applied for on the ground of misdirection, and that there is nothing in the other clauses of the act showing that no such power was intended to be given.

If your lordships decide in conformity with the opinion which has been expressed by my noble and learned friend the lord chancellor on the question of the construction of the twenty-sixth section, the second point made at the bar as to the retrospective effect of the rules does not arise. But should it become necessary to decide it, I think the answer given at the bar is satisfactory.

The authorities show that when new arrangements come into force for regulating procedure they operate on pending as well as future suits. Where this principle has been acted on, as it has often been acted on with reference to costs, I cannot quite reconcile my mind to what has been done.

Here, however, the *nova constitutio* was merely a regulation calculated or supposed to be calculated to make more sure the ultimate attainment of justice. It operated equally on both parties, and according to all the authorities affected existing as well as future suits.

In this branch of the question the right to make the rules prospectively must be assumed. And it is considered that when a suitor comes before the court he does so merely to obtain his right, whatever that right may be. He is not allowed to complain of any rules or orders lawfully made by the court for the better attainment of justice, merely because they have been made after he has placed himself within its jurisdiction.

On these grounds I think that the Court of Exchequer Chamber ought to have entertained jurisdiction.

LORD ST. LEONARDS. My lords, upon this case I have certainly formed a very decided opinion, and I regret to be able to say so, from the respect which I feel for the learned judges out of this house, and for some of my noble and learned friends in this house who entertain a different opinion, and that ought to make me rather more doubtful still than I am of any opinion which I may entertain; but that I do entertain a very decided opinion it is my duty to state to the House, when I am called upon to give an opinion for the assistance of the House.

My lords, I propose in the first place to ascertain what the true construction of the act is, standing alone. Let us suppose that the court of appeal had never arisen, and consider what is the construction of the Queen's remembrancer's act, and how the provisions of that act are worded, and for that purpose I must call your lordship's attention very shortly to the provisions of the act.

I assume, first, that the question of appeal had not given birth to the orders; then would the act of 1859, by its own force, have executed its own declared intention? The framers of that act had before them the two common-law procedure acts of 1852 and 1854, and other acts bearing upon the object in view. And from these they collected and adopted such of their provisions as they thought could be properly applied to the revenue side of the Court of Exchequer. For we must not lose sight of the peculiar duties and jurisdiction of that branch of the court, and the care which the court and the Crown lawyers would naturally take to prevent any alteration in the jurisdiction which was likely to affect the power of the court or the interests of the Crown. It is

precisely the case in which we should expect to find the intention carried into operation, through the aid of Parliament, to be expressed in clear language, and nothing left to inference or implication.

I may premise that, as far as intention is expressed, nothing can be more clear. Whether the matter in dispute is left to implication, or is among the things expressed, I shall presently consider. The act is, as we should expect to find it, technically drawn, and we are bound to construe it accordingly.

The object of the act was to simplify the proceedings on the revenue side of the court, to define the rights of appeal intended to be given, and to give rights of appeal to subjects newly created; for example, succession duty and legacy duty.

The first section which is material to our purpose adopts section 222 of the common law procedure act of 1852, for the amendment of errors. The next provides for proceeding on a special case by consent of parties and order of a judge, upon which error may be brought, as if on a judgment on a special verdict. This section is compounded of section 46 of the common law procedure act of 1852, and section 32 of the common law procedure act of 1854; and the succeeding section simply provides for costs.

By the four succeeding sections a new right of appeal is expressly created from the Court of Exchequer under the succession duty act. They direct how the court of appeal is to act, and they direct that such appeal shall be made to the court of error in the exchequer chamber, whose decision shall be subject to appeal to this house; and also a right of appeal is given in summary proceedings for succession or legacy duty.

Observe how well and clearly the act executes its own object! When it means an appeal it expressly says so, or as clearly uses words equivalent to it.

The next section extends to this act of 1859 the provisions of an act of William the Fourth, for the examination, &c., of witnesses, and once more selects four sections from the common law procedure act of 1852, which relate to the proceedings and powers of courts of error.

Recourse is then had to a previous statute of the 2d and 3d Victoria, chapter 22; and, adopting that act, it enables a judge *ad nisi prius* to hear a revenue cause without any commission from the revenue side of the court.

The act once more adopts three sections, sections 17, 18, and 19, of the common law procedure act of 1852, limiting the period within which error may be brought, and abolishing writs of error; and it carefully provides against the retrospective action of the latter provision, and gives, where it intended to do so, power to the barons to make certain orders as to bail. It was necessary to do so—and was done.

It still remained to secure a general right of appeal on the trial of issues arising on the revenue side of the court, and this was expressly accomplished by enacting that either party may tender a bill of exceptions. This is an original provision, and thus an old right was introduced for the first time on the revenue side of the Court of Exchequer.

This then left the act complete as regarded substance. Everything material, and requiring the power of Parliament, is expressly, and not by implication, provided for. Particular modes of appeal are selected and others rejected. New rights are created. The act of Parliament is the charter of the revenue side of the court. As regards form, section 26, which I must consider more at large by and by, provides power for the barons to make rules and orders as to the process, practice, and mode of pleading.

The act worked well. The learned barons understood their power under section 26, according to the common meaning of the words; and they accordingly in 1860 made extensive orders (amounting to one hundred and forty-six) for the regulation of the process, practice, and mode of pleading on the revenue side of the court, and more especially with regard to proceedings in error. Several of the provisions of the act of 1852 were adopted, so far as they were applicable. And in 1861 the barons issued some further orders for similar objects. But no attempt was made to create any new right of appeal, or to incorporate the appeal clauses now before your lordships.

In 1860 (the year after the Queen's remembrancers act) another act was passed, once more to amend the process, practice, and mode of pleading in the court, and for enlarging its jurisdiction; but no provision was made with regard to appeals from the revenue side of the Court of Exchequer. Two trifling powers, theretofore confined to courts of equity, were extended to the common law courts; and under the head of "appeal" express provisions in eight sections were made in regard to the rights of appeal from the new jurisdiction. Therefore what Parliament intended they carefully performed.

It would be worth your lordships while to look at the act of Parliament. There are three small sections giving new powers; and then there is in the body of the act itself the head of "appeal," with eight sections under that head, all of them expressly providing for rights of appeal in the most explicit terms. Parliament, therefore, as in the preceding act to that, namely, the Queen's remembrancers act of 1859, did not deal ambiguously in creating appeal, but they dealt expressly, like men of business competent to perform the acts of legislation which they were called upon to perform, and they told you plainly that which they intended to enact.

My lords, if we confine the act to what it clearly expresses, we shall give full effect to every clause and every word in every clause according to their ordinary import. The twenty-sixth section admits of an easy construction, reading it by the light of the general provisions of the act; and thus it was construed by the Court of Exchequer up to last November.

But at that period the Crown in this case had lost or abandoned its rights by bill of exceptions, and its only remedy against the verdict of the jury in favor of the defendants was to move for a new trial in the Court of Exchequer; and it was at once seen, that as the act of 1859 stood there would be no right of appeal on the part of the Crown if the Court of Exchequer should refuse to disturb the verdict, and therefore, to provide a right of appeal, the barons by their orders of the 4th of November last applied to the revenue side of the exchequer all the provisions in regard to the right of appeal in the common law procedure act of 1854, sections 34 to 45, and directed them to have immediate operation, and to apply to every proceeding then pending. This was done to supply the right of which the Crown stood in need, and it has accomplished its purpose, if the orders were authorized by the twenty-sixth section.

My lords, I say, and I repeat it, if the orders were authorized by the twenty-sixth section that is the question. Now, my lords, that section provides in these terms, that "It shall be lawful for the lord chief baron and two or more barons of the Court of Exchequer from time to time to make all such rules and orders as to the process, practice, and mode of pleading on the revenue side of the court, and as to the allowance of costs, and for the effectual execution of this act, and the intention and objects thereof, as may seem to them necessary and proper, and also from time to time by any such rule or order to extend, apply, or adapt any of the provisions of the 'common law procedure act, 1852,' and the 'common law procedure act, 1854,' and any of the rules of pleading and practice on the plea side of the said court, to the revenue side of the said court, as may seem to them expedient for making the process, practice, and mode of pleading on the revenue side of the said court as nearly as may be uniform with the process, practice, and mode of pleading on the plea side of such court."

Now it is clearly laid down that no right of appeal can be given except by express words. This I know will be questioned by my noble and learned friend opposite; but he will admit that no such right can arise by implication or inference, nor indeed does the Crown deny that express words are required, inasmuch as the attorney general relies upon the words "process, practice, and mode of pleading" in the second part of section 26; but undoubtedly he was driven to much pleading to make these words authorize the creation of new rights of appeal.

What is the power claimed? That of creating new rights of appeal. Did Parliament intend to delegate this, its own great power, without any check or control, to the very judge whose decision is to be the subject of appeal? It is difficult to come to that conclusion. Every line of the act negatives such a presumption. Observe how carefully it provides for new rights of appeal where it did create them, and how laboriously it selected from the legislative provisions before it those which would accomplish its object; and how, with equal care, it excluded what it did not adopt. It did not leave either the Crown or the suitor without a remedy—an equal remedy. The very twelve appeal clauses enacted by the barons were under the eyes of Parliament when the act passed; they are sections 34 to 45 of the common law procedure act of 1854. Observe section 32 of the act of 1854, immediately preceding those adopted and enacted as law by the barons of the exchequer, is selected and adopted and included in section 10 of the act of 1859. And, still more remarkably, sections 36 and 37 of the act of 1854 are also properly selected and adopted in sections 13 and 14 of the act of 1859. These two last-mentioned sections, 36 and 37, are among the orders, too, of the Court of Exchequer. And section 36 is probably not adapted to the act of 1854, for that section was in the act itself. Why did Parliament so carefully and so openly reject the others of this set of clauses in the act of 1854? for they formed one class. Can it be argued, from inference or from implication, that where Parliament have not imported the whole set unbroken and entire, but have picked out one here and another there, leaving all the others out, Parliament intended that the barons of the exchequer should, whenever they thought proper, take all or any of the clauses which had been thus carefully excluded and eliminated from the mass? How is it possible that such an argument can be maintained? Provision was made for all the modes of appeal which Parliament intended to grant between the Crown and the subject, and that was the reason why they selected them.

If the alleged power was really created it might have been exercised the day after the act itself had received the royal assent. Would not this have been a surprise upon Parliament? Supposing the Court of Exchequer, when the act of Parliament was quite fresh, the next day after it had received the royal assent, had said, This is a bungling act of legislation, but happily it enables us to supply what we think proper. We will take all those clauses and make them law which Parliament, in its ignorance, not knowing how to adapt those things, has excluded, and then we will make a perfect act of Parliament. Parliament would have been rather astonished. But that

would have been no greater exercise of the power, and there would have been nothing more extraordinary than now exists in the exercise of that power, at the moment in which the particular clauses were intended or required for a particular object. The very action under the authority claimed shows how great and dangerous is the power which Parliament is supposed to have delegated. If Parliament had itself thought proper to give to the revenue side of the Court of Exchequer the additional rights of appeal claimed to be created by the barons, in addition to those expressly provided by the act, look at the deliberations, the three readings, and committees, &c., in both houses, and the royal assent, and the time for consideration; whereas under the delegated power a transcript from the act of 1854, signed in chambers by the Court of Exchequer, operated at once as an act of Parliament. I say at once, because such is the express provision in the orders. I may, perhaps, venture to say that no such provision would have been made by Parliament *pendente lite*.

It is said that the order operated for the equal benefit of the subject and of the Crown. This, I think, has not been established. It was foreseen that in the event of the Court of Exchequer refusing the motion for a new trial the Crown would be estopped from further proceeding unless a new right of appeal were created.

The orders if valid gave that right, in the event which has happened, to the Crown, at the expense of the defendant, who would have to follow the Crown in its appeal to a higher tribunal, in order, if they could, to maintain the verdict of the jury in their favor. Now, if the orders were invalid, the parties would seem to stand thus: The Crown would be absolutely defeated, if the new trial was refused, and the defendants would be successful. But suppose a new trial to be ordered, the defendants would not have been defeated, but the litigation would proceed, and in the result the defendants might be able to appeal to the highest tribunal. A judgment against the Crown would be final, but a judgment against the defendants would not.

It appears to me, therefore, subject to correction, that the Crown obtains under the orders, if they are valid, an advantage over the subject. Indeed, although this may not be so, or the consequences may not have been foreseen, the orders were issued to meet the difficulty which the Crown had to surmount. That the barons of the exchequer, for whom I entertain the highest respect, acted with the purest intentions, no one can doubt; but the *ex post facto* operation of the orders, if valid, would of itself have led me to the conclusion that Parliament had not given, nor shown any intention to give, a power of such an objectionable nature. This very exercise of the power to that extent appears to me to show conclusively that no such power thus attempted to be exercised could have fallen within the intention of the legislature.

It was argued that the barons of the exchequer had full power over the appeal. This, however, could give them no power to create new rights of appeal.

It was then urged that no new ground of appeal had been created; that, as the act of 1859 allows a bill of exceptions, it can, like the new order, only be for misdirection; that a bill of exceptions is full of difficulty, but that both being for the same cause, there is no new ground of appeal. This no doubt is so; but the answer appears to me to be, that a new right of appeal is given, and that Parliament, having had its choice of remedies, selected that of a bill of exceptions in clear terms, thus, by the simplest construction, excluding other remedies; whereas the orders add these excluded remedies for the same object, thus acting under an alleged delegation of legislative power in direct opposition to the authority of Parliament.

My lords, I would compare the act as it stands to a manufactory, carefully constructed, and fitted by scientific men with machinery, admirably adapted to its particular objects. It is still perfect in all its parts. It can execute all that it was intended to perform, if you will but let it alone. Send a skilled workman, and he will at once know how to adapt the proper portion of the machinery to the work which he requires. An unskilled workman could not overlook the power of the machinery, but he would complain that there were simpler mechanical plans known, and with great simplicity he would ask that they might be added to the fixed machinery. No, says the manufacturer, my works are open to all men, but my machinery was selected as best adapted to the objects I had in view. I had before me the simpler schemes which you mention, and I deliberately rejected them, but still provided ample machinery to suit even your purpose. Ask me not, therefore, to clog my work by the additions which you propose. They would introduce new forces which I do not require, and would greatly interfere with the action of my present works. If you come to my manufactory you must use my machinery.

My lords, upon these broad general views I should have been prepared to give my opinion against the orders in question; but after the opinions which have been delivered, and the arguments which have been addressed to the House, it is no doubt proper to review the special grounds upon which the barons of the exchequer claim to exercise legislative delegated authority to create a new right of appeal.

Now I agree that to create such a right it is not necessary to use the word "appeal;" but some clear equivalent terms must be used. And if this be the rule where Parliament is executing its own purpose, how powerfully must it operate where it is delegat-

ing its legislative functions! We have a right to expect a clear and unambiguous expression of its intention; open to no doubt or cavil; nothing left to inference or implication. How slight is the duty just simply to say that the authority given to the barons shall extend to the other various rights of appeal contained in the common law procedure act of 1854, from which Parliament had already adopted such of the remedies as they thought it fit to apply to the revenue side of the Court of Exchequer. And if this precision might be expected in any common case, here we might be assured it would not be omitted. What, would Parliament leave its intention on such a vital point open to so much ambiguity as to require arguments occupying several days to establish the true construction of the delegated power, and to lead to divided opinions among our learned judges? And yet this is the very act of Parliament in which new powers of appeal on the revenue side of the exchequer were expressly created by that word; in which indeed the terms "appeal" and "appealing" meet the eye all through the act in its actual provisions. If the delegated power be given to the exchequer, how remarkable it is that Parliament, having expressly created rights of appeal where such was their intention, should suddenly have altered their language, and used ambiguous terms with the intention, not only to delegate like powers to the barons of the exchequer, but powers actually enabling them to create the very rights which Parliament itself had rejected. Parliament said, that the litigating parties, except in certain cases otherwise provided for, should proceed by bill of exceptions. The barons of the Court of Exchequer say, you shall have, in addition to those rights, others which Parliament have withheld from you.

My lords, these views would lead us to examine with much care the delegated powers given to the Court of Exchequer; and I must therefore once more trouble your lordships with reading section 26, before I proceed to a minute examination of those powers. "It shall be lawful for the lord chief baron and two or more barons of the Court of Exchequer from time to time to make all such rules and orders as to the process, practice, and mode of pleading on the revenue side of the court, and as to the allowance of costs, and for the effectual execution of this act, and the intention and objects thereof, as may seem to them necessary and proper; and also from time to time by any such rule or order to extend, apply, or adapt any of the provisions of the 'common-law procedure act, 1852,' and the 'common-law procedure act, 1854,' and any of the rules of pleading and practice on the plea side of the said court, to the revenue side of the said court, as may seem to them expedient for making the process, practice, and mode of pleading on the revenue side of the said court as nearly as may be uniform with the process, practice, and mode of pleading on the plea side of such court." And section 27 empowers the Court Exchequer to issue new forms of writs and proceedings.

Now section 26, although consisting of two parts, forms only one law, having the same object. The first portion authorizes the barons generally, from time to time, from any source, to make such rules and orders as to the process, practice, and mode of pleading on the revenue side of the Court of Exchequer, &c., and for the effectual execution of the act, and the intention and objects thereof, as may seem to them necessary and proper. Now, to stop here for a moment, it is admitted by the learned attorney general that under this authority the barons of the exchequer could not have supplied the bill of exceptions if section 20 had not granted it; and it could not have been supplied by the second part of the clause, which I am about to read, because no such provision is in the common-law procedure act. And further, it was admitted that under this authority the appeal clauses in question could not have been created. But, to proceed, the second portion of section 26 adds, "and also from time to time by any such rule or order to extend, apply, or adapt any of the provisions of the 'common-law procedure act, 1852,' and the 'common-law procedure act, 1854,' and any of the rules of pleading and practice on the plea side of the court, to the revenue side of the court, as may seem to them expedient for making the process, practice, and mode of pleading on the revenue side of the court as nearly as may be uniform with the process, practice, and mode of pleading on the plea side of the court."

I appears to me clearly that the whole of this second portion of the section is governed by the concluding words. The first portion speaks generally of the process, practice, and mode of pleading; whereas, although the second portion first authorizes generally the application of any of the provisions of the common law procedure act, it proceeds to say, "and any of the rules of pleading and practice" (omitting "process") "on the plea side of the court," and then winds up, as we have seen, by declaring the object to be to make the process, (here that word is introduced,) practice, and mode of pleading as nearly as may be uniform on both sides of the court. So that the first part of the second portion of the section would extend to *process*, and the latter part to *practice and pleading*. And in that way the concluding words clearly control, direct, and explain the whole of section 26.

It seems difficult to admit that these powers would not have enabled the barons to create a right to a bill of exceptions on the revenue side, and at the same time to hold that the right to a bill of exceptions, actually created by the statute, could, under

the power in section 26, have attached to it (or indeed, in substitution for it) other and easier modes of appeal to the higher courts. It would be found difficult to give a different construction to the words "process, practice, and mode of pleading" in the first and in the second portions of section 26. I must say, that after all that I have heard, and after the great attention which I have paid to this case, I am quite unable to understand the ground upon which it was possible to maintain a solid argument that in the one part of the section the words are to be read in one sense and in another part they are to be read in a different and in an opposite sense.

The section itself is so framed as to exclude the construction contended for. The words "from time to time," carefully repeated, seem to point at such power as would not only from time to time be granted, but could also be repealed or altered; in short, confined to process, practice, and pleading, in the ordinary sense of those terms. No doubt the barons of the exchequer could deal with existing appeals under the act, but they could not create any new right of appeal.

It is remarkable that section 26 gives this legislative power, as claimed, to the lord chief baron and two or more barons of the exchequer, so that the concurrence of all the barons was not required. And yet in the next section, which is for mere matter of form, the authority is confined to the lord chief baron and barons. Parliament does not seem to have attached much importance to the delegated power. If it was the intention of Parliament, divesting itself of a power which it ought never to part with, to delegate to any other person out of Parliament legislative power—power to enact new laws and create new rights of appeal, thereby conferring the greatest power which Parliament could confer upon a court—if, I say, such could have been the grave intention of Parliament, stripping itself, as it ought not to have done for any reason, of a power which it declined to exercise itself, and which it never intended to exercise, would it have left to a mere majority of the Court of Exchequer that great power, whereas when it came to a question of form immediately succeeding the special great power, it requires all the court to concur? Where is the construction which possibly could lead your lordships to take such a view of such a clause as that which we are now considering?

I cannot think the saving clause at the end of the act unimportant. It declares that nothing in the act contained shall affect or prejudice the jurisdiction or authority of the Court of Exchequer, &c. Now, the making of orders giving a right of appeal from the Court of Exchequer, where such right of appeal did not before exist, is an act by the present barons of the Court of Exchequer which does, if valid, affect and prejudice the jurisdiction and authority of the court in all time to come. The present barons exercising this power have superadded what did not before exist, namely, a right of appeal in various modes from the decision of the Court of Exchequer, leaving out, therefore, not with the authority in those respects which it had within its own court, the same power which this house possesses, that is to say, the power of deciding without any appeal beyond from its decision. The Court of Exchequer having a right to decide without any power of appeal, the present barons of the exchequer have, in the exercise of this supposed power, given the right of appeal from their decision, and have therefore made their judgments subject to the decision of a higher tribunal. If that is not affecting their jurisdiction, I cannot imagine what can be said to be so.

My lords, I have, by anticipation, shown that my opinion is that the words "process, practice, and pleading" cannot bear the construction put upon them by the attorney general. I think that they must be received in their common acceptation. Several of the sections in the act of 1859 appear to me to show that Parliament used the terms in that restricted sense.

I will ask your lordships to observe that section 22 and those clauses which I am now referring to are not printed in the joint Appendix; they do not appear to have struck anybody in the way in which they strike me at present. Section 22 makes good defects in pleading on the revenue side of the Court of Exchequer. Section 23 relates to process for levying of fines, &c. Section 24 directs execution to issue to recover certain debts according to the rules and practice of the court. And those terms are all repeated in section 26, which is separated from the others only by one clause creating a new right in the Crown. It is remarkable, therefore, that in the very act which contains section 26, which speaks of "process, practice, and pleading," in three of the sections immediately preceding the twenty-sixth, one gives you an instance and a rule in regard to process, another gives you an instance and a rule in regard to pleading, and another gives you an instance and a rule in regard to practice. Well, then, as Parliament had just spoken of "process, practice, and pleading," and shown their proper application to the proper cases—in every instance using the very terms, not in a sort of interlocutory expression, not inference, not implication, but in the very terms that we are now speaking of, speaking of process, speaking of pleading, speaking of practice, every one of those terms used, and every one of them applied distinctly and directly to its own proper object and its own proper work—is not that a guide to section 26? When it speaks, therefore, of the process, practice, and pleading of the court, we have only to cast our eyes a few inches above, and to look at the rules above,

and the very act of Parliament tells us what Parliament itself intended by those expressions. It appears to me, I confess, with very great submission, that although no doubt the observation has not been hitherto made, it would be very difficult to answer that view of the case.

The fact that no such extended irresponsible power was ever before given by Parliament to any judges is entitled to much weight when we are asked to construe words into an authority to create an appeal to the Exchequer Chamber and to this house, although no such intention is expressed, and although the words which are used may well be satisfied by applying them to other and minor, yet important objects.

The more it is attempted to show that the barons of the exchequer have an absolute power to create new rights of appeal on the revenue side of the court, the more I am impressed with the objection that, looking through the four corners of the act of Parliament, not only is no such intention expressed, but the whole frame of the act rebuts a construction which would not be subsidiary to the act, but would run counter to its express and careful provisions.

My clear opinion therefore is, that the orders were void, and that the appeal should be dismissed with costs.

LORD WENSLEYDALE. The question which your lordships have now to decide is very important. I regret to find that the conclusion to which some of my noble and learned friends have arrived differs from mine, and, from the sincere respect I have for their opinion, I cannot feel so much confidence in my own. But, after having given every consideration in my power to the question, I feel bound to advise your lordships to adopt the course which I think is just, and to reverse the decision of the Court of Exchequer Chamber.

The question, though important, really lies in the narrowest compass, and is only as to the meaning of the twenty-sixth section of the statute 21 and 22 Victoria, chapter 21, "An act to regulate the office of Queen's remembrancer," which makes it lawful for the lord chief baron and two or more barons of the Court of Exchequer, from time to time, to make rules and orders, and also from time to time, by any such rule or order, to extend, apply, or adapt any of the provisions of the common law procedure act, 1852, and the common law procedure act, 1854, and any of the rules, and pleadings, and practice on the plea side of the said court to the revenue side of the said court, as may seem to them expedient for making the process, practice, and mode of pleading on the revenue side of the said court as nearly as may be uniform with the process, practice, and mode of pleading on the plea side of the said court.

To this section we must, I am clearly of opinion, apply the ordinary rule of construction applicable to all written instruments: What is the true meaning of the words used, according to their usual acceptation and their ordinary grammatical meaning? And, applying that rule, I do not think there is much doubt what the meaning is. Does it authorize the Court of Exchequer to grant an appeal to the Court of Exchequer Chamber and the House of Lords against the decision of the Court of Exchequer on the revenue side, on a rule for a new trial on the ground of misdirection?

But, on perusing the very able opinions of some of the judges of the Court of Queen's Bench, delivered in the Exchequer Chamber, I perceive in them a suggestion of a rule of law that such power of appeal was so *unusual* that it required "a clear unambiguous expression" of the intention of the legislature in order to support it; that the power must be "distinctly and unequivocally given;" and that supposed rule seems to me to have had great influence in forming the opinions of these judges of the Court of Queen's Bench.

Such a rule of construction appeared to me to be entirely new, as far as my experience went, and I inquired from the learned counsel in the course of the argument, whether any authority could be found for such a principle of construction. I was referred by Mr. Mellish to some cases on the subject of appeals from the decisions of magistrates collected in Dickinson's *Sess. Cases*, sixth edition, 626. These, when closely examined, appear to amount to more than this, that an appeal cannot be given "by implication," that is, in truth, no more than that however much you may be satisfied that the legislature must have intended to have given it, it is not enough unless there are words to give it.

I have often had occasion to mention, in the construction of written instruments, how important it was in every question of intention, to distinguish between the meaning of the words used, and what the framer of them may be supposed to have intended, and I have found that the rule has not always been attended to. In my opinion there is no legal ground for such a principle of construction as seems to have been acted upon by some of the judges.

The true question for us to decide is: What is the ordinary and grammatical meaning of the words used in this section? Do these words give the chief baron and two barons the power of extending the right of appealing against the decision of a rule to show cause for a new trial on the ground of misdirection to the Court of Exchequer Chamber? such a power being clearly given to the common law courts by the act of 1854.

The first part of the twenty-sixth section gives the judges power to make new rules

and orders on the revenue side of the court. It is not contended that this would authorize a new rule to allow an appeal. The words of the second part, if taken by themselves, would be clearly enough to allow *all* the provisions of the acts of 1852 and 1854 to be adapted.

Three questions then arise: First, Is this so unreasonable that the general power is not to be so construed? for no doubt if the natural and ordinary construction of the words used would lead to an absurd or unreasonable consequence, they may be moderated, or qualified, or explained.

Secondly, Does the circumstance that other provisions of the statute expressly enacting that certain clauses of the common law procedure act, 1853, and the common law procedure act, 1854, should be in force and extend to the revenue side of the Exchequer, afford a proof that *none* others were intended to be extended, applied, or implied.

And thirdly, Does the conclusion of the twenty-sixth section, explaining that the object of the enactment is that the process, practice, and mode of pleading of the revenue side of the Court of Exchequer should be made uniform with the process, practice, and mode of pleading on the plea side of the court make any difference? Is the word "practice" to be understood in the larger sense of the whole conduct of the procedure in the suit in the Court of Exchequer, from the beginning of the suit to the ultimate judgment and execution, or in the more limited sense of common and ordinary practice?

These several points must be disposed of.

1st. It seems to me that it is impossible to say that the introduction of a power of appeal against a decision upon a rule nisi for a new trial for misdirection, in point of law, is an unreasonable power; on the contrary, it is a most satisfactory one. It gets rid of the difficulties and inconveniences of a bill of exceptions, which all practitioners know to be extremely troublesome and embarrassing in its preparation and settlement, and substitutes a much more simple course for inquiry into the propriety of the judge's ruling. I think it is wholly impossible to contend with success that the substitution of this mode of proceeding is not a very reasonable one.

Nor is there anything in the least unreasonable in delegating this power to the judges of the court itself. Mr. Justice Willes, in his very able judgment, has given many instances of such delegations by the legislature to others. The act 3d and 4th William IV, chapter 42, the first of a series of acts by which the law has been greatly reformed and improved, gives to the judges the whole authority to make most important changes, subject only to the condition of being laid before Parliament. The common law procedure act, 1852, gives a somewhat similar power to the judges. So the common law procedure act, 1854. These powers were given to a quorum of eight judges, the chiefs of the court being three. In this case it is the chief of the exchequer and two judges who have the power delegated to them, but the delegation being perfectly reasonable there surely is not the shadow of an objection that a quorum of the judges of the court, who alone administer the law of the exchequer, should have the power to make the allowed alterations in it. I think, therefore, that the power of adopting the provisions as to appeal is valid.

2d. Does the enactment, in express terms, in the statute 22d and 23d Victoria, chapter 21, of certain provisions as applicable to the revenue side of the Court of Exchequer, afford an inference that they were all that the legislature meant to be so applied, and operate as a sort of legislative declaration that no more should be so applied? I think this circumstance affords no such inference; clearly not those which are independent of the power to appeal, or to bring a writ of error. All that can be implied is, that those powers were all that the legislature then thought expedient, but they give to the judges the power of adding, from time to time, others which they might judge proper if circumstances should render it advisable. It is confided to them to exercise that discretion fairly and properly. Had the legislature thought it right to allow no other provisions to be applied, nothing would have been more easy than to have said so. We cannot imply that without its being said.

These sections are the ninth, tenth, twelfth, fifteenth, and twentieth. The ninth refers to the power of amendment only, and is given to its full extent. It is of the most frequent application, and nothing is more reasonable than that the legislature should, at all events, have enacted that this useful provision should be made.

Mr. Justice Willes has assigned most satisfactory reasons why the new sections giving error or appeal were necessarily inserted. It is from those only that any inference can be drawn that the powers of error and appeal were to go no further. The twelfth section giving appeal from the assessment of the commissioners of inland revenue, was absolutely necessary, because the common law procedure acts, 1852 and 1854, could not have given it. So the fifteenth section, giving error on a writ of summons on the succession duty act, or for legacy duties. So the twentieth. For a bill of exceptions in a common case was not given by the statute of 1852, but only in the newly constituted multifarious case of ejectment. It was given by the statute of Westminster 2d.

As to the section 10, there is great doubt also, to say the least, whether it was not necessary, for it does not give precisely the same powers to state a case as the forty-second and forty-sixth sections of the statute of 1852, the first of which gave only a

qualified power to the judge on being satisfied that the parties have a *bond fide* interest in the question, which is not required in the section 10. It would not have been sufficient, therefore, to leave those forty-second and forty-sixth sections unaltered, and section 10 effected that object. As the attorney general in all revenue cases is a necessary party, he is included in the term "parties," as pointed out by Mr. Justice Willes's judgment, and his consent to a case would supersede the judgment of a judge as to the *bond fide* interest in the question. This, in my mind, is quite satisfactory; but even if it leaves it a matter of doubt whether this power could have been given by the acts of 1852 and 1854, it was expedient to make it perfectly clear, and to leave no question as to the right of the attorney general, on behalf of the Crown, to the claim to have such a case stated, with the consent of the other party to the cause, and the simple order of a judge.

On the whole, it seems to me clear that the principle of *expressio unius est exclusio alterius* cannot be held to apply.

I have come, therefore, after much consideration, to the conclusion, that the second part of the twenty-sixth section authorizes the exchequer judges to make a rule giving an appeal in the case of a discharge of a rule nisi for a new trial.

The third question is, whether this power is qualified, so as to confine it entirely to matters of the ordinary *practice* of the court in a limited sense.

The words of the second part go much beyond that. They authorize the chief baron and barons from time to time, by any rule or order, to extend, apply, or adapt any of the provisions of the common law procedure act, 1852, and the common law procedure act, 1854. This is quite independent of the clause authorizing the application of the rules of pleading and practice; but the general object is, to make the process, practice, and mode of pleading on the revenue side of the court, as nearly as may be, uniform with the process, practice, and mode of pleading on the plea side of the court.

Does that provision *limit* and *control* the power to adopt the provisions of the acts 1852-1854, and apply to common and ordinary practice in the limited sense only? Many of those provisions in the two acts go greatly beyond "practice," in that sense, and process and pleading also. Can it be supposed that the legislature meant to undo, by the use of that term in the concluding part, what they had given before?

I cannot but think that, to make the whole clause consistent, the word "practice" must be construed in the larger sense given to it in the judgment of the judges of the court of common pleas, and explained more particularly by Mr. Justice Willes. It seems to be used in the same sense as it is in the preamble of the statute 1852, (which is of much more importance than the title,) and in the preamble of this act, 22d and 23d Victoria, chapter 21. It is for rendering the process, practice, and mode of pleading in the superior courts more simple and speedy; and one purpose, *inter alia*, is to make provision in relation to the *procedure* on the revenue side of the court.

Nor can I see any ground to confine the enactments to one department of the revenue side of the court, as contended by Mr. Mellish. The words apply equally to all pleadings and proceedings in revenue.

The abolition of the writ of error on the revenue side by section 19, (giving the barons a discretion as to bail, which would not, therefore, necessarily affect the attorney general,) and by the act of 1852, section 148, which enacts that a writ of error shall not be necessary or used in the proceeding to error, but shall be a *step* in the cause, seems to me to put the court from which the record was before removed by the writ of the Queen, entirely on a different footing. The suit is now begun and ended in the same court. The cause is not removed. The execution issues from that court, the court of error giving its assistance to come to a right final conclusion. I agree with the judges who think that the whole proceeding, from the beginning to the end of the suits, the taking the opinion of the court of error as well as acting upon it, constitutes the *practice* of the court, since the recent alteration and a different mode of taking that opinion is a part of that practice.

But a question has been presented to our attention, at the close of Sir Hugh Cairns' argument, and since fully discussed, which must be now considered. Was it competent for the judges of the exchequer to alter the law as to *then* pending proceedings, and to enact provisions at the time which they did, viz, on the 4th November, 1863, so as to affect the verdict which the claimant then had, which was subject only to the then existing law, and make it subject to another mode of inquiry.

I was much impressed with this objection at first, and was for a time strongly inclined to think that it was well founded, and that the new rules, though operative as to all future suits, were not operative in this. But the further argument, and a full consideration of this question, have satisfied me that this objection is not well founded.

Two questions present themselves: 1st. What would have been the effect, if the legislature had made a new act of Parliament, containing precisely the same terms as the rules of the 4th November? Would it have affected existing suits? 2d. If it would, ought the rules to be construed in a different way, and not allowed to have that effect?

I answer; that the new law would affect the existing suit; and the delegated authority to the barons of the exchequer ought to have precisely the same effect.

First, in this case it is perfectly clear that what I for the present may call the *law* of the 4th November, 1863, took away no *right*. The verdict had been given for the claimant. The power of tendering a bill of exceptions was gone. The new law took away no right from the claimant. It gave both the claimant and the Crown precisely the same right, that of questioning the propriety of the decision of the Court of Exchequer on a rule for a new trial for misdirection. If the judgment was given for the claimant, the Crown has the right to question that by appeal. If for the Crown, he has exactly the same right. The new law is, therefore, perfectly fair to both parties.

But, independently of that consideration, I think that if it were an alteration in the mode of proceeding only, to the prejudice of the claimants, the objection would not prevail.

There is no doubt of the justice of the rule laid down by Lord Coke in the 2d Institute, 202, that enactments in a statute are generally to be construed to be prospective, and to regulate the future conduct of parties. But this rule of construction would yield to the intention of the legislature. It could not be supposed that the legislature meant to deprive a man of a vested right of action. This was laid down in *Moon vs. Dundas*, in 2 Exchequer, 22.

But, on the other hand, it is clear that there is a material difference when an act of Parliament is dealing with a right of action already vested, when it is presumed that it is not intended to take it away; and when it is dealing with mere procedure to recover those rights, which it may be quite reasonable to regulate or alter.

This has been most clearly and satisfactorily explained in the case of *Wright vs. Heale*, 30 Law Times, Exchequer, 40, particularly by Sir James Wilde. In that case it was held that the common law procedure act, 1860, section 34, which enacts that if a plaintiff in action for a wrong in the superior courts recover less than £5 he shall not be entitled to costs, unless the judge certifies that the action was brought to try a right, applies to actions tried after, but commenced *before*, the suit. Sir James Wilde says, with truth, that this does not take away any right.

The right of the suitor is to bring the action, and to have it conducted in the way and according to the practice of the court in which he brings it; and if any act of Parliament, or any rule founded on the authority of the act of Parliament, alters the mode of procedure, then he has a right to have it conducted in that altered mode. That, therefore, takes away nothing. The right of action does not make the right to keep all the consequences of the right as they were before. It gives the right to have the action conducted according to the rules then in force with respect to procedure.

I am, therefore, clearly of opinion that if the provisions of the rule had been in an act of Parliament of the same date, the act would have affected existing suits, and would unquestionably have given an appeal in suits in which verdicts were already obtained.

Secondly, Are these rules made, not directly by Parliament, but by delegated authority, to be differently construed? I think not. Parliament has delegated the power, without restriction, to the judges. It has made no conditions that it should operate only as to future suits; and if it was not to affect pending suits, many useful alterations might have been prevented. The period of making the allowed rules is left entirely to the judges themselves to decide. It must be considered as unquestionable that they had a power to make rules for existing suits; and if they make great changes, even if they were to be thought unreasonable, they would not therefore be void, because the discretion of the judges is absolute, and their rules final. But, in truth, they operated with perfect fairness on both the litigant parties.

I forgot to say, that the criticism on the language of the rules made in the course of the argument may be well founded. They are not accurately prepared, but their meaning is clear. There is a mistake in the provision as to the "court of error," which is copied from the words of the act. It referred to another court of error, but the meaning is perfectly clear, and the inaccuracy cannot possibly lead to a mistake.

I am, therefore, of opinion, that the judgment of the Court of Exchequer Chamber ought to be reversed.

LORD CHELMSFORD. My lords, I cannot help feeling some regret that the learned barons of the Court of Exchequer did not hesitate a little before they determined to relieve the Crown from the difficulty in which it was placed with respect to a bill of exceptions by issuing the rule in question; because, from the haste in which it was necessarily prepared, in order to render it available for its intended object, scarcely any time could have been afforded them to consider the grave doubts which have subsequently arisen, and which upon reflection might have occurred to themselves, as to their power to meet the emergency in the mode which they adopted. They might also upon consideration have felt, that, however justifiable the occasion might seem, it was not desirable under any circumstances to make a rule which, though in terms calculated for general application, was purposely designed to answer the exigency of a particular case.

To this rule, so introduced, an objection has been taken at your lordships' bar on

account of its supposed retrospective operation. This objection does not appear to have been raised in the court of error, though incidentally mentioned in the course of the argument there. Whatever conclusion may be adopted as to the propriety of making the rule at the time and upon the occasion when it was issued, or as to its operation and effect, I am so strongly of opinion it was *ultra vires* of the framers of it, that I think it unnecessary to make any observations upon its alleged invalidity on any other ground.

The short question is, whether the legislature, by the 26th section of the Queen's remembrancer's act (22 and 23 Vict. c. 21,) has given to a majority of the barons of the Court of Exchequer the power to determine whether it is expedient that there should be a right of appeal in a case in which none existed before.

There is to my mind a sort of *prima facie* presumption against this having been intended, arising from the consideration that if the legislature meant to delegate their power in this respect, a very few plain and simple words would have been sufficient to express their intention; but, so far from clearly conveying their meaning, it is so concealed under the language they have employed, that the ingenuity of the ablest counsel has been tasked to discover it; and after arguments of great length, both in this house and in the Exchequer Chamber, it is still left in the doubt and uncertainty which must necessarily result from the difference of opinion which it has produced.

Clear and distinct language might have been expected upon an occasion when the legislature, having ample means of forming a competent judgment of the expediency of allowing an appeal in a particular case, were about to remit to the judges of a court the discretion of determining whether such an appeal from their own decisions ought or ought not to be granted. I quite agree with my noble and learned friend (Lord Wensleydale) that it is not necessary that the power should have been "distinctly and unequivocally given," but neither ought it to have been left to a doubtful and conjectural inference from equivocal words.

The whole argument is involved in the construction of the latter part of the 26th section of the Queen's remembrancer's act—"And also from time to time," &c. The section has been read so often that I will not trouble the House with it. The words to be principally dwelt upon are "process, practice, and mode of pleading." Now these words "process" and "pleading" are by common consent dismissed, as wholly inappropriate to describe any proceeding which is to be carried on beyond the walls of the court; and the whole stress of the argument is laid upon the word "practice." But as this word "practice" (more especially looking to the company in which it is found) would in its ordinary meaning be confined, like the other two words, to the court itself, it has been necessary to pray in aid of the more extensive meaning contended for, the words of the common law procedure act, 1852, section 148, repeated in the Queen's remembrancer's act, section 19, that "the proceeding to error shall be a step in the cause."

The argument then proceeds thus: Writs of error being abolished, and appeals substituted, in every case in which error can be brought, the proceedings to the court of appeal are proceedings in the court below, and become part of the practice of the court. Therefore a statute empowering the judges of one court, from which no appeal lies, to assimilate its practice to another, from which a right of appeal exists, necessarily and expressly confers the power to create such an appeal, or the practice of the two courts would not be uniform.

But this argument appears to be without foundation from the language of the legislature or which it is rested. It is to be observed that the words used are not "the proceeding in error shall be a step in the cause," but "the proceeding to error." It would certainly be an extraordinary provision to enact that the proceedings in one court shall be part of the practice of another, but not at all to say that every step up to the very door of the court of error shall be a proceeding in the court from which the error proceeds.

The word "practice," however, is said to be a word of wide extent. Mr. Justice Willes says, it applies to "all the proceedings by which a cause is brought to judgment and execution;" and Chief Justice Erle says, "Throughout the common law procedure act and the Queen's remembrancer's act, procedure is used as equivalent to process, practice, and mode of pleading." But the word "procedure" is nowhere used in any of the enactments of the common-law procedure act or of the Queen's remembrancer's act. It is merely part of the name by which the first-mentioned act is to be cited, and a portion of the title of the latter act. The learned Chief Justice's meaning must therefore be, that the word "procedure" is used by the legislature as the description of an act which comprehends provisions as to process, practice, and pleading—a remark which, with great deference, appears to me to have no force at all in the argument. Mr. Justice Willes also is not quite accurate in saying that the word "practice" is a word applying "to all the proceedings by which a cause is brought to judgment and execution." In its ordinary meaning it is undoubtedly distinguished from the "pleadings;" no unimportant part of the proceedings by which a cause is brought to judgment. The learned judge also, placing no reliance upon the word "process," and

of course not on the word "pleading," says, "but, coming to 'practice,' practice is no term of art." Here, again, I must beg leave to differ with him. "Practice," even standing by itself, applies to a part of the proceedings of a court which are sufficiently distinguishable from the rest to be the subject of books of practice. As to his observation, that one of the heads of such a work will be the head of "Error," that is likely to be the case, because courts of error have their practice as well as courts of original jurisdiction. A book of practice, therefore, without such a heading, might be regarded as imperfect or incomplete, but it could hardly be called "maimed" (in the view of the learned judge,) because nothing would be cut off from the history of the practice of the other courts, of which alone upon the supposition it would profess to treat.

It may be that the word "practice," under certain circumstances, may be as comprehensive in its expression as the argument requires; but it hardly seems a correct mode of ascertaining its meaning, in the place where it is found, to separate it from all the other words with which it is associated, and having thus detached it from its qualifying context to construe it by itself. Even if the term "practice" might in a popular sense be taken to comprehend all the proceedings in a suit from the beginning to the end, yet when the legislature uses it with the words "process and pleading," it must have a limited meaning assigned to it. And as the practice of a court is as much distinguished from its process and pleading as these portions of the proceedings are from each other, the word "practice" in such a connection cannot be supposed to have been intended (in the words of Chief Justice Erle) "to include the whole of the suit from the issuing of the first to the execution of the last process." But attributing the most comprehensive meaning to the word "practice," it is still the practice of the Court of Exchequer to which the statute refers; it is a proceeding in that court which is to bring the parties to the door of the court of error. The practice pointed at does not advance a single step over the threshold of the court of appeal. It is applicable to all cases in which a right of appeal previously existed, but has no force whatever to create a new right. To give it that effect would be to confound the distinction (in the words of Mr. Justice Crompton) between the "machinery of the appeal and the right of appeal."

The view which I have taken of the limited extent of the word "practice" in the twenty-sixth section of the Queen's remembrancer's act appears to me to receive strong confirmation from other parts of the act. In several other sections appeals from the revenue side of the Court of Exchequer are specially provided for; and it may fairly be asked why, if the legislature intended that there should be an appeal in cases of motions for a new trial, a provision to this effect was not expressly made. It is generally considered to be a sufficient indication of intention when certain things are specifically enumerated, that others not mentioned are not proposed to be included.

Plausible reasons have been suggested why it was necessary that the act should contain provisions for appeals on special cases, bills of exception, and cases of succession and of legacy duty. Yet no satisfactory explanation has been given why the legislature should have taken all these under its own direction, and, as if proclaiming its incompetency to decide upon a question of expediency, should have left the only remaining case to be provided for by the delegated discretion of a majority of the Court of Exchequer.

But, even limiting the view to the section in question, the whole frame of it appears to me to militate against the construction which would extend the power of the barons of the exchequer to a proceeding beyond the precincts of their own court. Besides the company in which the word "practice" is found, both clauses of the section provide for the exercise from "time to time" of the powers which it confers.

It has been argued, and perhaps correctly, that if the barons possessed the power of giving an appeal, and executed it, it could not be recalled. But this appears to me to prove that the act could not apply to such an irrevocable power, but was intended to be confined to the adoption of such provisions of the common law procedure acts with respect to process, practice, and pleading as might properly be subject to alteration "from time to time," according to the result of experience.

It was argued, that unless the power to extend, apply, or adapt any of the provisions of the common law procedure acts applies (among others) to the clauses giving the rights of appeal on motions for new trial, the powers given by the two clauses would be coextensive, and the latter would be merely a repetition of the former. But it appears to me that the two portions of this section may be distinguished from each other, and that each may have its due effect. Alterations in the proceedings on the revenue side of the Court of Exchequer having been introduced by the act, some rules would be absolutely required to meet this new state of things. Accordingly, the former part of the section directs the barons to make rules as might seem to them necessary and proper; but beyond these rules, which were indispensable, the legislature, considering that some of the provisions of the common law procedure acts, and the rules of pleading already made for the regulation of the pleading and practice on the plea side of the court, might possibly be usefully applied to the revenue side; but not having the practical experience necessary to enable them to make a selection for themselves, therefore by the latter part of this section they leave to the discretion of the judges

to determine which of these provisions and rules (if any) it is expedient to adopt in order to produce uniformity in the proceedings on both sides of the court.

My noble and learned friend, Lord Wensleydale, says: "The words of the latter part of the section, authorizing the chief baron and barons from time to time by any rule or order to extend, apply, or adopt any of the provisions of the common law procedure acts, are quite independent of the clause authorizing the application of the rules of pleading and practice." But, with great respect, I would observe that in this portion of the section the sense is carried on from the words "and also" continuously to the end; that the whole of it must, therefore, be taken together in construction, and then it will appear that it is not to any of the provisions of the common law procedure acts absolutely that the power applies, but only to such as may seem expedient for making the process, practice, and mode of pleading on the revenue side of the court as nearly as may be uniform with the process, practice, and mode of pleading on the plea side of such court.

We are thus brought back again to the point upon which the whole controversy turns, viz, the meaning of the word "practice" as it stands in the act. I have already endeavored to show that it cannot possibly apply to any proceeding beyond the court itself, and that therefore those sections of the common law procedure acts which relate to appeals are not within the range of the discretionary authority intended to be conferred by the legislature.

My lords, I have arrived at this conclusion with great reluctance. It is very much to be regretted that the Crown should have been deprived of the means of appealing from the decision of the Court of Exchequer upon a question of national importance. I should have been glad to find some reason for supporting the validity of the rule issued by the barons, but I can discover none.

I must, therefore, act upon the clear conviction of my own judgment, and pronounce my decided opinion in favor of the respondents.

LORD KINGSDOWN. My lords, the argument on the first question in this case as to the power of the Court of Exchequer to make the orders in question has been so entirely exhausted that it would be improper for me to go into it at any length. The reasons assigned by the majority of the judges in the Exchequer Chamber appear to me to preponderate, and the grounds on which my judgment rests are laid down more clearly than I could state them in the opinion of the Lord Chief Justice.

Previously to the Queen's remembrancers act there were, as I understand, no means of reviewing a decision of the Court of Exchequer on the revenue side except by writ of error.

Under the two acts of common law procedure of 1852 and 1854 there were on the plea side a more simple proceeding in error than by writ of error, and also the several other remedies introduced by the act of 1854. There was, further, the proceeding by bill of exceptions independently of those acts.

If all the proceedings in error and appeal applicable to the plea side of the court were considered applicable to the revenue side, there seems no reason why by the act of 1854 they should not have been extended to both sides. The same observation applies to the act of 1859. Why, if they were thought by the legislature to be all applicable, were they not all applied?

But instead of taking that course the legislature makes a careful selection of some clauses, and omits others. With reference to the particular matter now in question, it omits the appeal from the decision on a motion for a new trial, and gives, as I think in substitution for it, the proceeding by bill of exceptions.

It has been said that the same relief may be had by both those modes of proceeding, but that there are many difficulties in the latter which are not found in the former.

If this be so, the Crown may have been willing to give the right of review, subject to the restrictions which those difficulties might impose, but no further; but that, contemplating the application of both remedies, the legislature should itself give the one and the least convenient, and leave it to the Court of Exchequer, at its discretion to give or withhold the other, is to me quite inconceivable. It may have used words so large as to compel us to say that this power is given; but, if the clause be capable of two constructions, I think that should be adopted which is most consistent with the probable intention to be collected from the other clauses.

When the words of the twenty-sixth section are examined, it seems to me that they neither require nor warrant the larger construction.

The clause is introduced for the purpose of enabling and directing the Court of Exchequer to make rules and orders for regulating its process, practice, and mode of pleading, with a view to the alterations introduced by the act, and to making such process, practice, and mode of pleading as nearly as may be uniform on the two sides of the court.

For this purpose, and as I understand it for this purpose only, it may extend, apply, and adapt any of the provisions of the two acts of 1852 and 1854.

Read in their ordinary meaning, as applied to proceedings in the court itself, the words are reasonable, consistent with the other provisions of the act, and in accordance

with what is found in the two acts referred to. They are consistent also with the provision that the rules may be made from time to time, and with the fact that the same words which apply to the provisions of the two acts are applied also, in the expressions immediately following, to the rules of pleading and practice on the plea side of the court. I am by no means satisfied that there is any redundancy in the language of the clause thus construed; but if there be, it is not, in my opinion, sufficient to outweigh the objections to the other construction.

What the Court of Exchequer has attempted by its orders to do is to give to two superior courts, the Exchequer Chamber and the House of Lords, jurisdiction to hear, and to impose upon them the duty of hearing an appeal against its decisions, with which, except for those orders, those courts would have neither the duty nor the right to interfere.

Can it possibly be said that this is to regulate the practice of the Courts of Exchequer? All the proceeding which leads to the other courts, *when those other courts are open*, all the proceeding to error, is a step in the cause, and part of the practice of the court; but whether the doors of the other courts are to be open or not, surely is not a point of practice in the inferior court.

It is said that the legislature has already given the appeal by means of a bill of exceptions, and what is now proposed to be done is only to do the same thing in a more convenient form.

But the answer to this seems to me to be, that the legislature has given no general power to the superior courts to review the decisions of the Court of Exchequer. It has prescribed certain special modes of proceeding by which this may be done, and has by necessary implication excluded others.

The law, before the orders, said "the decision of the Court of Exchequer on a motion for a new trial shall be final." The orders say it shall not be final. It is not a new mode of effecting an object which could already be attained in a different mode. There was no mode whatever then subsisting by which the decision now complained of could have been disturbed. There was a mode by which the necessity of moving for a new trial might have been prevented, but that is quite a different thing; and it is not because that mode has failed (no matter from what cause) that the Court of Exchequer can create a new jurisdiction which the legislature has not created, and in my opinion has not authorized the Court of Exchequer to create.

Having arrived at this conclusion on the first point, I think it unnecessary to say anything on the second.

Judgment.

DIE MERCURI, APRILIS 6^o, 1864.

Whereas Friday, the 11th day of March last, was appointed for hearing counsel upon an appeal wherein her Majesty's attorney general is appellant, and Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, and William Thompson Mann, claiming the *Alexandra*, are respondents; complaining (upon a case settled and signed by the lord chief baron of the Court of Exchequer, pursuant to the provisions of "the common law procedure act," 17 and 18 Victoria, cap. 125) of a rule dated the 8th of February, 1864, made in her Majesty's Court of Exchequer Chamber in the matter of an information filed by her Majesty's attorney general on behalf of her Majesty in the Court of Exchequer against the ship *Alexandra* for the forfeiture of the said ship, to which information Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, and William Thompson Mann appeared, and thereupon claimed the said ship; and praying their lordships to reverse the said decision of the said court of Exchequer Chamber, and to give such judgment and direction in the premises as to this house, in their lordships' great wisdom, should seem meet; counsel were accordingly called in, and were heard as well on Friday the 11th, as Monday, the 14th, and Tuesday, the 15th days of March last, when the further consideration of the said appeal was adjourned; and whereas this day was appointed for the further consideration of the said appeal, and due consideration being had thereof, and of what was offered on either side thereon:

It is ordered and adjudged, by the lords spiritual and temporal in Parliament assembled, that the said rule or decision of the said Court of Exchequer Chamber, dated the 8th of February, 1864, appealed against, be, and the same is hereby, affirmed; and that the said appeal be, and the same is hereby, dismissed this house. And it is further ordered, that the appellant do pay or cause to be paid to the said respondents the costs incurred in respect of the said appeal, the amount thereof to be certified by the clerk of the Parliaments.

Copy writ of delivery of the ship Alexandra to the claimants, issued from the Queen's Remembrancers Office of the Court of Exchequer.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To Edward Morgan, an officer of our customs at our

port of Liverpool, and to all other officers of our customs at that port, and to all persons having the custody, possession, or control of the vessel *Alexandra*, with her tackle, apparel, furniture, and materials, for us or in our behalf, and to all others whom it may concern :

Whereas you, the said Edward Morgan, have seized to our use as forfeited the said vessel *Alexandra*, with her tackle, apparel, furniture, and materials, which by an indenture of appraisement dated the 13th day of April, 1863, returned into our Court of Exchequer at Westminster, is appraised at the sum of £9,500, the property whereof hath been claimed by Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, and William Thompson Mann, who have entered such their claim thereto in our said court, and pleaded in discharge of the said seizure, and on a verdict of the country the said vessel *Alexandra*, with her furniture, tackle, apparel, and materials, was found not to have been forfeited; and by judgment signed in our said court on the 20th day of April, in the year of our Lord 1864, it was considered that the said vessel *Alexandra*, with her tackle, apparel, furniture, and materials, be delivered to the said Hermann James Sillem, Henry Berthon Preston, James Willink, David Wilson Thomas, and William Thompson Mann, or to their assigns: We therefore command you and each and every of you that on receipt of this our writ or notice thereof, you deliver or cause to be delivered the said vessel *Alexandra*, with her furniture, tackle, apparel, and materials, to the said Hermann James Sillem, Henry Berthon Preston, Jacob Willink, David Wilson Thomas, and William Thompson Mann, or to their assigns, or to the bearer of this our writ, for we will that you be thereof discharged toward us by virtue of these presents. Witness Sir Frederick Pollock, Knt., at Westminster, the 20th day of April, in the year of our Lord 1864.

In pursuance of the foregoing writ the vessel was delivered to the claimants on Monday, the 25th day of April, 1864.

APPENDIX No. XVI.

DEBATE IN THE HOUSE OF COMMONS OF FEBRUARY 23, 1864, ON THE SUBJECT OF THE SEIZURE OF THE STEAM RAMS BUILDING FOR THE SOUTHERN CONFEDERACY.*

[From Hansard's Parliamentary Debates, vol. 173, pages 935-1021.]

HOUSE OF COMMONS, *February 23, 1864.*

VESSELS EL TOUSSON AND EL MONASSIA—PAPERS MOVED FOR.

Mr. SEYMOUR FITZGERALD: I rise to move an address for—

"Copies of all correspondence between the various departments of her Majesty's government, or officers in her Majesty's service, and Messrs. Laird Brothers, relating to the two iron-clad vessels, the *El Tousson* and *El Monassia*, building by that firm, and seized by order of her Majesty's government; and of any papers or correspondence that have passed between her Majesty's government and the government of the United States, or their representative, Mr. Adams, relating to the said vessels."

Sir, I am not insensible of the delicacy of the task I have undertaken in calling the attention of the House to the circumstances which are the subject of the notice I have put upon the paper. A very few days ago, in addressing this House in reference to some events that have taken place, and the conduct pursued by the cruisers of the American government toward our merchant ships, I expressed a desire that nothing should fall from me calculated in the slightest degree to aggravate the feeling of irritation which I felt unhappily existed between the two countries. Sir, in the same spirit I shall to-night call the attention of the House to that portion of those transactions which implicate and concern the conduct of her Majesty's government. I shall scrupulously avoid, except by an incidental allusion for the sake of illustrating the subject in hand, referring to the correspondence, which we all know was addressed to the minister of the United States in this country, but which he, in the exercise of discretion and good sense, which, from his first arrival amongst us, has not ceased to characterize him, thought it best not to present. I will only, in passing, make this remark upon that correspondence, that looking at the arrogant and almost insolent tone in which it was couched, if the writer had desired to find out some means of making the adoption of the policy he wished to enforce impossible, he would have exactly taken the course he did, and addressed a letter of that kind to his minister at a foreign court—a letter which, in my opinion, did little credit to the diplomacy of the American government, and was highly insulting to the dignity of this country. Sir, I am equally aware that the honorable and learned gentlemen whom I see opposite will meet the motion which I am about to make by the objection, that it has reference to matters which are still the subject of judicial investigation. Well, sir, I am fully aware that there is great force in that objection, but not in a case like the present; and I will tell the House why. I think that to discuss circumstances which are the subject of judicial investigation is a highly inconvenient and very often injurious proceeding; and if we were now to discuss the question, whether these vessels were rightly or wrongly seized under the foreign enlistment act, then I think there would be considerable force in the objection which my learned friend will urge against me. But, inasmuch as that is not my object, my desire being to obtain from the government papers which may show whether before that seizure took place the conduct of her Majesty's government was consistent with law or not, then I say the objection of my honorable and learned friend must necessarily fail, and I think the House will not refuse me the papers for which I ask.

Now, sir, it will be necessary for me, in bringing the matter before the House, shortly to refer to the history of the events connected with these steam rams. It appears from the papers which I have here, and which are the papers laid by the American government

* Transmitted with dispatch No. 604, from Mr. Adams to Mr. Seward, February 25, 1864, vol. II, p. 392.

before both Houses of Congress, that Mr. Adams, having learned that certain vessels of a formidable kind were being built at Birkenhead, at the yard of Messrs. Laird Brothers, addressed Earl Russell on the 11th of July, and accompanied his letter with depositions which he thought seemed to prove that those vessels were intended for the use of the Confederate States. And he not only gives, as far as he can, the fullest depositions within his reach at that time, but he urges the subject upon the notice of Earl Russell in terms the most forcible; for Mr. Adams described the building of these two rams as being regarded by the government and people of the United States as tantamount to a participation in the war by the people of Great Britain to a degree which, if not prevented, could not fail to endanger the peace of the two countries; and he gives him, as far as he can, the fullest depositions, by which Earl Russell is to determine whether it is in the power of the government to interfere or not. This communication of Mr. Adams, dated the 11th July, is followed by others on the 16th and 25th of the same month, and the 14th of August; and upon each one of these occasions Mr. Adams presents to Earl Russell additional depositions, calculated in his opinion to prove to Earl Russell that it is the duty as well as the interest of the government to stop at once the progress of these steam rams. Well, sir, these depositions are at once forwarded by Earl Russell to the proper quarter—to the law officers of the Crown—and during the whole period from the 11th July down to the 1st September, the circumstances brought under the notice of Earl Russell by Mr. Adams received the careful consideration of the law officers of the Crown, and the careful attention of the responsible advisers of the Crown. Now, the next question is, what is the result of this investigation entered into by the government, assisted by the law officers of the Crown? The result is communicated by Earl Russell to Mr. Adams in a dispatch of some length, bearing date the 1st September. I will not trouble the house with the dispatch in full, but there are portions which it will be necessary I should bring under notice. Earl Russell, after saying that he has submitted the papers during this long course of time to the law officers of the Crown, states:

“In the first place, her Majesty’s government are advised that the information contained in the depositions is in a great measure mere hearsay evidence, and generally that it is not such as would show the intent and purpose necessary to make the building and fitting out of these vessels illegal under the foreign enlistment act.”

The dispatch, referring to the statement that the vessels were built for M. Bravay, of Paris, said that there was no legal evidence against M. Bravay’s claim, or to show that the ships were built for an illegal purpose. The noble lord then goes on to say that the responsible agent of the customs at Liverpool affirms his belief that these vessels have not been built for the confederates, and he concludes finally by saying this:

“Under these circumstances, and having regard to the entire insufficiency of the depositions to prove any infraction of the law, her Majesty’s government are advised that they cannot in any way interfere with these vessels.” (Correspondence, No. 4, 1864, p. 12.)

Now, it is perfectly clear that up to that time Earl Russell had had the fullest information given to him by Mr. Adams, and that the decision of the government and law officers of the Crown was that they could not, with any respect for law, interfere with the rams building at Birkenhead. The house then will, I think, scarcely be prepared to hear that on the 4th of September, only three days afterward, the under secretary for foreign affairs, at the direction of Earl Russell, wrote to the lords commissioners of the treasury to request that these rams should be detained. What had happened in the meantime? Had any new information reached Earl Russell? Upon that, sir, again referring to this book, which gives very full information to Congress as to all that passed—information which I could have wished to have seen as fully in the possession of the House of Commons—I find that the only thing that had happened in the meantime was that Mr. Adams had again addressed Earl Russell. Of that communication, on his part, Mr. Adams gave this description. In a dispatch addressed to Mr. Seward, and dated the 3d of September, 1863, Mr. Adams wrote:

“As the case seemed doubtful, I concluded that the wisest course would be to put in one more remonstrance. Accordingly, I have taken advantage of some depositions of no great additional weight, furnished to me by Mr. Dudley and others.”

Upon the face of the matter it appears, then, that having the fullest information, the law officers of the Crown decided that there was no ground to interfere; but, afterward, upon Mr. Adams presenting to Earl Russell depositions which he himself says were of no greater additional weight, Earl Russell immediately proposes to seize and detain these steam rams. The question immediately arises, was there anything besides this additional information presented to Earl Russell’s mind which caused this change of view? I will point out, presently, what was the opinion of the American government, and the statement of Mr. Adams himself, upon the subject. But the first question I wish to ask is, how it came to pass that, not having any evidence whatever, according to their own account, to seize these rams, her Majesty’s government should have proceeded to detain them? I wish them to point out to me under what act of Parliament or by what authority it was done; and how it was that, having waited during the whole

month of September without seizing the rams or putting the facts in any shape for legal investigation, they proceeded to detain them, particularly in the form and with the language in which it was done. What is the first announcement made to Messrs. Laird as to the stopping of the rams? It is in a letter signed by G. A. Hamilton, dated September 9, 1863, and it announced to them that the vessels would not be permitted to leave the Mersey till satisfactory evidence could be given of their destination, or, at least, until the inquiries which were being prosecuted to obtain such evidence should have been brought to a conclusion. [The attorney general: Hear, hear.] The honorable and learned gentleman will have an opportunity of giving an answer which will convey something more definite to the house than that cheer. Is it a principle of the English law, in the enforcement of a highly penal statute, not to proceed according to the requirements of the statute, not to put those implicated upon their trial, not to put the whole circumstances of the case under a course of legal investigation, but to say: "We, by the prerogative of the Crown and the act of the executive, will take care that your vessels shall not leave the Mersey till you have proved to us that you are engaged in an innocent transaction, or until some roving commissioners that we have about the world may have returned and reported that they have no evidence to give us on the subject?" One of the most remarkable things in reference to this matter is, that the government have announced that they have no sound ground to go upon. What is the whole course of their proceedings with Mr. Laird from the 1st of September to the time when the vessels were eventually seized? Notwithstanding what has been said by the noble earl in another place, that, on the 3d of September, he directed those vessels to be seized, I believe there must be some error as to the date, for I cannot conceive it possible, if the noble earl directed the under-secretary of state to write to the lords commissioners to stop the rams on that day, that he would have the vessels stopped on that day, he would have done so without giving the slightest notice to Messrs. Laird that this interference was impending, and he would have allowed a friendly note to be written to Messrs. Laird, asking them to furnish her Majesty's government with information, with as little delay as possible, on whose account those vessels were being built; for a letter was written to Messrs. Laird in these terms: "Lord Russell is led to understand that while you are not in a position to volunteer information, you would furnish it upon official application." [Mr. Layard: Hear, hear.] It is all very well for the honorable gentleman to cheer, but the question is, was not that letter written at the very moment the government was directing a prosecution? and yet they did not tell the Messrs. Laird that the information which they were ready to give might be used against them in an information which was being then prepared. But that is not all. Her Majesty's government having been informed by Messrs. Laird that the person for whom they were building these rams was M. Bravay, of Paris, and that they were intended for the Pasha of Egypt, they could only have made an application to M. Bravay to purchase them themselves, on a conviction in their minds that his title to them could be proved. They said that they were going to detain the rams and to institute a prosecution, because they were convinced that the vessels were intended for the confederate government; but, in the same week, they applied to M. Bravay to sell them to the English government. This, however, was not a solitary application. Long after they had determined that these vessels must be detained, the government, through the chief constructor of the navy, at Liverpool, proposed to buy them of Messrs. Laird. The reply that was given to Mr. Reed was, that they must have some better authority for entering into the negotiations, and thereupon an authority from the admiralty to negotiate the purchase was produced by him. Thus the very government which tried to purchase the rams, on the ground that those who were represented to be the real owners were the owners, during the whole month of September and up to the 27th of October, never turned one moment from the position they had taken, that they would detain the rams until satisfactory evidence of their destination was given them. There is a remarkable letter of Earl Russell's, dated the 11th September, 1863, which conclusively proves that the noble earl persisted in his intention to detain these rams long after he was convinced that the story told by M. Bravay, that they were ordered by him for the Pasha of Egypt, was true. Writing to Mr. Adams, the noble earl said it was important to show that the iron-clads were not intended for the Pasha of Egypt, and he went on to say that—

"In respect to the Egyptian government, it was only on the 5th instant that her Majesty's government received a dispatch from Mr. Colquhoun, her Majesty's consul general in Egypt, which is conclusive on the subject. It was reported, on the 28th August, that M. Bravay, a French subject, had stated to Ismail Pasha that the orders were given when said Pasha was last in Paris, and M. Bravay seems to have asked Ismail Pasha to fulfill the verbal agreement of his predecessor, and to purchase the vessels on which M. Bravay has paid a very large sum on account; but Ismail Pasha refused to purchase."

Earl Russell went on to say:

"From this example, and that of the vessels built for the Emperor of China, the

vessels which Captain Sherard Osborne took out, the president will gather how necessary it is to be dispassionate and careful in inquiries upon subjects so grave as this."

That dispatch either meant that Mr. Colquhoun's dispatch was conclusive that M. Bravay was the owner of the vessels, or that the statement of Mr. Colquhoun proved satisfactorily that the story of M. Bravay was not correct. But how could it prove the latter, when the only contradiction was, that Ismail Pasha had refused to fulfill the contract which his predecessor had entered into? I appeal to the house, looking to the two statements side by side, to the case of the vessels ordered by M. Bravay, and of the vessels ordered by Captain Sherard Osborne for the Emperor of China, which vessels were universally said to be intended for the Confederate States, is it not perfectly clear, from the dispatch of Earl Russell, that, at the time it was written, on the 11th of September, the noble lord believed that the story of M. Bravay was true, or, at any rate, that it was true that Mr. Laird had built those vessels for M. Bravay on the distinct understanding that they were intended for the Pasha of Egypt? How came it that when the law provided a distinct course of action, if the government had a just suspicion that the foreign enlistment act had been violated, and it was their duty to proceed to seize the vessels—how came it that, not having evidence sufficient to justify their seizure, they proceeded, in the absence of all evidence, to detain the rams?

But the question remains, what passed to lead to this sudden change of opinion on the part of the noble earl? That has been answered by a dispatch from Mr. Adams himself, a dispatch addressed to Mr. Seward, and dated September 8, 1863. It states that—

"At the last moment on Saturday, I sent a dispatch by the ordinary mail containing a copy of a dispatch from Earl Russell to me of the 4th instant, just then put into my hands, signifying that the decision of the government announced in his previous note of the 1st instant had, under the effect of my notes on the 3d instant, been subjected to 'reconsideration.'"

There, sir, is the secret of the whole matter. The real truth is, that, while using language milder than that of the officials at Washington, Mr. Adams had yet used language so forcible as almost to be menacing, and in his dispatch of the 3d of September, couched in the most temperate language, the American minister pointed out distinctly that the event of the rams leaving the Mersey and inflicting injury on American commerce would infallibly lead to a war between this country and the United States. [Hear, hear, from the ministerial benches.] I scarcely know what honorable gentlemen are cheering at when the statement I make is this, that the government, without having any legal authority, and having stated that they had no legal authority to stop these rams, yet under the pressure of a menace held out that war would ensue if they did not stop them, proceeded to take that course. [Mr. Dunlap: Hear, hear.] Is that the statement which the honorable member cheers? Is it that we should have a government who, having themselves announced that they had no legal authority for the act, yet in spite of the law seized the property of a British subject, because they were told by the representative of another power that if they did not do so consequences would be serious? I do not think that such will be the feeling of the house generally, still less of the country. I can say, with truth, that there is no man who would more deprecate any difference or hostility between this country and the United States than myself. I believe that such a war would be a fatal war, and a most unnatural war, and I hope I may never live to see the day when it is entered upon; but if I am to be told that the English government, in order to avoid such a war, is to transgress the law and seize the property of a British subject without any justification, then I say that I will never approve the conduct of a minister who would take such a course; but, on the contrary, am prepared to accept any consequences than pursue such a line of policy.

I ask the house to give me these papers, to enable the public and this house to judge whether the government have done their duty, whether they have overstepped the law, whether they have strained the law, and if so, for what reason and under what circumstances it has been done. The honorable and learned gentleman opposite, I am told, will decline to give the papers on the ground that they refer to matters still under judicial investigation. I have already said that, if the question of the legality of the seizure of these rams was the question involved in my motion, I should admit there was force in the objection; but that is not the ground I take. My ground is, that the motion does not relate to matters which are the subject of judicial investigation, but to the legality of the preceding steps of the government in detaining the rams. I take still higher ground. I think that in the interests of justice these papers should be produced. There is nothing for which the people of this country are more remarkable than their respect for the law. There is only one thing of which they ought to be still prouder, and that is, that with all their respect for the law, there has always existed in every class a feeling of jealousy of the powers of the executive ever being so strained, or the law ever being so overstepped, as to injure the interests or endanger the privileges or rights of even the meanest of her Majesty's subjects. And if I am told that this question is now under judicial investigation, let us look at the case of the *Alexandra*, and see what is the

course of judicial investigation in this country. It means investigation that may last for years. In this very case the government began the investigation in July; they detained the ships early in September, and they were seized in October; but it was not until February that the slightest step was taken to bring the case to trial. It is only within a short time that Messrs. Laird have been informed that an information has been filed against them; and it would probably be the duty of the government to send a commission abroad to take evidence in support of their information. Taking everything into account, it will probably be the end of the year before the case can be sent for judicial investigation. And is the House of Commons to be told, upon a question where the government have overstepped their authority and violated the neutrality which they profess, that they must wait two years for information, because the question was under judicial investigation? Such a reply can scarcely, I think, be regarded as satisfactory. I have limited, in order that there may be the less difficulty in giving the information, my motion to two particular subjects, one being the correspondence which has passed between her Majesty's government and the Messrs. Laird with regard to those vessels; and why on earth the government should decline to produce that part of the correspondence I cannot understand. All the letters of the government are in the hands of Mr. Laird, who, of course, has copies of their own to the government, and he has only to send them to the newspapers to have them published at once; and I do not see why the House of Commons should not have placed in their possession an authoritative version. The other papers I require are the correspondence between her Majesty's government and the representative of the American government. I think I see a copy of that correspondence on the knee of the honorable member for Bradford, (Mr. Forster,) and half a dozen honorable gentlemen have copies. The principal letters have been published in every newspaper in the United States; some have been quoted in the newspapers here; and why should the House of Commons be prevented from inquiring into the conduct of the government by the withholding of papers which are already in print? Upon these grounds, I hope the house will enforce the production of the papers, and then we shall see whether her Majesty's government have or have not acted in that way which alone entitles them to the support of the British people.

Mr. Horsfall seconded the motion.

Motion made, and question proposed.

THE ATTORNEY GENERAL. Sir, my honorable friend does not hesitate to admit that he is sensible of the existence of some force in the objection to his present motion founded on the fact that this case is the subject of judicial investigation, but he seems to think that he will be able to evade that difficulty by limiting the scope of the inquiry to the conduct of her Majesty's government antecedent to the seizure of these vessels. He is of opinion that, the papers for which he asks having been produced, the House will be in possession of all the information which is necessary in order to enable them to form a judgment as to whether the government have or have not in this matter done their duty. Now, by the very limitation which my honorable friend has made in the terms of his motion, he himself clearly admits that he knows, and that the House must be well aware, that to ask for all the papers in the hands of the government—which would place honorable members, as well as the country, in a position really to understand the grounds of the action which the government have taken—would be directly to interfere with the administration of justice in this case, and to make the House of Commons instrumental in facilitating the objects in their litigation against the government of private claimants, who doubtless would find it very convenient, by means of such a motion as this, to get behind the scenes and possess themselves of all the information in the hands of the government, so as to enable them to defeat its case, if possible, however just it might be. Why, such a thing was never heard of as that, while a case was waiting for trial, the government or any other litigant party should be called upon to produce all the materials in their possession from which a sound and correct judgment could be formed in justification of the course they have adopted. My honorable friend says his object is to obtain the production of papers which would enable the House to know whether the government has done its duty, at the same time that he is well aware he does not move for those papers, without which a fair decision cannot be arrived at on the subject. He wishes, in short, not for the case of the government but for the production of fragmentary and garbled extracts, consisting in part of documents which have passed between the government and Mr. Adams, and which, though I think there will be no advantage in laying them on the table, yet we are ready to produce, although they will not put the House in a position to form a correct judgment on the merits of the case. But my honorable friend also wants to have the correspondence which passed between the government and Messrs. Laird, the constructors of these vessels, and who are now in part claimants of them; and he asks for that correspondence without the other documents showing the grounds on which the government acted, notwithstanding the professions of openness and candor made in that correspondence. The production of those letters alone would be tantamount to laying on the table of the House, by the authority of the government, that which is not the case of the government, and would really not enable the House to understand why the government were

not satisfied with those professions, and why the government, conducting for a long time and with caution an important inquiry, found in the end that it was their duty to take the step they did of seizing the vessels on their own responsibility, being prepared hereafter to justify that course at the proper time and proper place. My honorable friend calls upon us to do the very thing he said he would not to do, namely, to rehearse our case to the House; and, in the absence of materials, he at the same time tries to persuade the House that Earl Russell and the government acted on grounds not warranted by law and under the influence of representations, almost of a menacing tone, made by Mr. Adams.

The House will excuse me if I follow my honorable friend only partially into the statement he has made. First of all, to take up the commencement of the matter, on the 11th of July Mr. Adams sent to Earl Russell a letter representing the affair to be of grave importance, and urging the government to fulfill their professions of neutrality and execute the law by preventing the departure of the vessels in question. I ask the House whether any person could blame Mr. Adams, or the representative of any foreign nation, for urging a matter of that description in the most pressing and serious manner on the attention of the government. In this case the matter was pressingly urged by the minister of the foreign country most interested in it, if his belief turned out to be correct; and are we to be told that, because his expressions might in certain instances overstep that moderation which is always desirable in questions of this kind, we ought to deviate one inch from doing our own duty, or in any way abstain from redeeming our own professions of honest neutrality? What would have been said if the United States, to whom we applied to enforce their own foreign enlistment act during the war with Russia, had turned round and said that they would not enforce it because it was Great Britain that asked it to be done? Should we have thought such a course consistent with the dignity of that country or with the honesty of its profession of neutrality? Undoubtedly it is the right of a foreign state, injured by proceedings of that description, to represent the injury, and to call on a friendly power to enforce the laws and observe the obligations of neutrality; and it is, I venture to say, the duty of that power, not overstepping the limits of its own laws, but acting fully, firmly, boldly, and courageously up to the extent of those limits, to attend to the representation made to it, and to put its laws in force. What was this case? Here are ships of that formidable character, which, even according to the view taken in the Court of Exchequer, in the recent case of the *Alexandra*, by one of the judges not in favor of the Crown, are, if intended for the confederate government, contrary to our enlistment act, and capable of doing the most extensive mischief to the commerce of the United States the moment they passed beyond the limits of our waters. The character of the ships was patent and known, and the only question was, whether they were intended, as Mr. Adams believed, for the confederate government. What was the course taken by her Majesty's government? They desired to have such evidence as would justify them in acting as would produce a conviction in their own minds of the truth of the facts alleged, and as they could produce in a court of justice. The depositions forwarded to the government, though containing some matter which was properly evidence and capable of being produced in a court of justice, contained more that was not capable of being so produced; and, on the whole, it did not appear to the government proper then to treat the vessels as liable to confiscation. That decision was announced to Mr. Adams on the 1st of September. It is said, however, that Mr. Adams, on the 3d of September, repeated his instances, and that on the 4th an order was given to detain these vessels, or to prevent them from leaving the port of Liverpool. That order, however, was not the result of a decision adopted by the government after the receipt of Mr. Adams's letter of the 3d of September, but, as stated in another place, of a decision arrived at previously. The honorable gentleman asks whether any new information reached Earl Russell in the meantime. That is just the one thing contained in the papers asked for by the honorable gentleman, and which we do not mean to tell him, but he may be sure that the government had grounds for what they did. They were themselves during the whole period actively prosecuting inquiries, and information reached the government which determined the measures they took at every stage and every step. The honorable gentleman asks what right the government had to detain the ships, [Mr. Seymour Fitzgerald: Hear, hear!] The honorable gentleman cries "hear;" but I do not hesitate to say boldly, and in the face of the country, that the government, on their own responsibility, detained them. They were prosecuting inquiries which, though imperfect, left on the mind of the government strong reasons for believing that the result might prove to be that these ships were intended for an illegal purpose, and that if they left the country the law would be violated, and a great injury done to a friendly power. The government did not seize the ships, they did not by any act take possession of or interfere with them, but on their own responsibility they gave notice to the parties interested that the law should not be evaded until the pending inquiry should be brought to a conclusion, when the government would know whether the inquiry would result in affording conclusive grounds for seizing the ships or not. If any other great

crime or mischief were in progress, could it be doubted that the government would be justified in taking steps to prevent the evasion from justice of the person whose conduct was under investigation until the completion of the inquiry? In a criminal case, we know that it is an ordinary course to go before a magistrate, and some information is taken of a most imperfect character to justify the accused's committal to prison for trial, the prisoner being remanded from time to time. That course cannot be adopted in cases of seizures of vessels of this description. The law gives no means for that, and therefore it is that the government, on their own responsibility, must act and have acted in determining that what had taken place with regard to the Alabama should not take place with respect to these ships that they should not slip out of the Mersey and join the navy of the belligerent power, contrary to our law, if that were the intention, until the inquiry in progress should be so far brought to a conclusion as to enable the government to judge whether the ships were really intended for innocent purposes or not. There is all the distinction in the world between giving a notice, which had the effect of detaining the vessels on the responsibility of the government, and seizing them; for the latter the government desire never to do, unless on such evidence as would clearly justify the seizure. In point of fact, this detention has been neither more nor less than an announcement to the builders that the ships were under the surveillance of the government, and that if any attempt were made to withdraw them suddenly from the river, the government, on their own responsibility, would take the necessary measures to prevent it. Practically, this made, during the time, no difference, because the ships were incomplete, and the moment had never been reached when, even according to the statement of builders, they were actually stopped or detained before the seizure took place. On the 9th of September Mr. Layard wrote to Mr. Hamilton, of the treasury, that the ships were not to be allowed to leave the Mersey until either satisfactory evidence of their destination was obtained, or the inquiries which had been commenced were brought to a termination. Of course, if any satisfactory information could be afforded in the mean time showing that they had an innocent and lawful destination, that was all which the government could by possibility aim at or desire. But if no information of that kind could be given, the government were determined that the inquiries which they were making should be brought to a legitimate conclusion, that it might be seen whether those inquiries resulted in evidence or not of the vessels being intended for the confederates, and that in the mean time they would not permit the ends of justice to be baffled by the sudden removal of the ships from the river. Messrs. Laird had early intimation of this determination. About the same time the note which we have heard quoted was written to Messrs. Laird, making inquiry who was the owner or the person representing himself to be the owner. I ask the honorable gentleman to read the earlier part of that note, because I knew it would then appear to have been written upon the invitation of Messrs. Laird themselves. They had given the custom-house agent to understand that although they would not volunteer information, yet, if the inquiry were made officially, they were quite prepared to answer it. Nothing was more desired by the government than to receive satisfactory information which by possibility might show the destination of the ships to be lawful, and might put an end to the whole question. Accordingly they wrote that they had been informed Messrs. Laird had the information ready to give, and that the information would be acceptable. Then Messrs. Laird mention the name of the French gentleman who has been referred to, M. Bravay, and stated that he was the owner of the ships. The next objection is that during this period the government were willing to become purchasers of the vessels from M. Bravay or Messrs. Laird. This is during the period when they were not fully satisfied that they had evidence on which they would be justified in seizing the ships. It was during that period that inquiries were in progress, and while those inquiries were incomplete. I venture to say that a course more just or liberal could not well have been taken than this. The government did not wish to enforce the forfeiture of valuable property against individuals. If it be true, they said, that a private French gentleman is speculating in two ships of this description—if he is a dealer in large steam rams—it must be presumed that, as he is not a belligerent, he must wish to sell them to some one or another. Messrs. Laird or M. Bravay might either be under some delusion as to what the law of England permitted, or, strange as it might seem, that it was a real *bona fide* speculation in steam rams of war by a private French gentleman having no intention to send them to the Confederate States; but if so, probably they would be quite ready, and it might be an easy solution of the matter, to sell them to the British government. They were not obliged to sell them to the government; but what harm there could be in offering them an opportunity of proving their good faith, and at the same time avoiding loss and finding a customer, I am unable to see. I abstain purposely from going more fully into the facts; whenever all the facts are known, it will be seen that the application of such a test to M. Bravay's statements was entirely justified by the nature of those statements, and that the object of the government was not at all to acquire the vessels for themselves. The next passage of the correspondence to which my honorable friend referred was Earl Russell's letter to Mr. Adams, of the 11th of September, 1863. It is there stated that the government, as I read the

letter, had been perfectly satisfied that there was no truth in the representation that the ships were meant for the Egyptian government, because inquiries had been made which did indeed show that there had been something said by M. Bravay on the subject, but the government of Egypt entirely repudiated the existence of any contract whatever for the purchase of such vessels, and said they had nothing to do with these vessels. An Egyptian destination having been alleged, so far it appears, they had not an Egyptian destination. The next thing done was to seize them. I, of course, abstain strictly from informing my honorable friend of those facts which the government had ascertained, which satisfied them beyond doubt that illegality had been committed, and that there was a forfeiture; but it will be a satisfaction to the House to have some good ground for believing and knowing that, as a matter of fact, they were not Egyptian vessels which the government seized, and that they were really intended for that service which was supposed when they were seized. My honorable friend has read from papers which have been laid before the Congress of the United States. Other papers have also been laid before another congress, and in a document which has been made public as the report of the secretary of the confederate navy to his own congress I find this passage contained:

"In accordance with the order of the president, early in the present year I dispatched several agents to England and France, with orders to contract for eight iron-clad vessels suitable for ocean service, and calculated to resist the ordinary armament of the wooden vessels of the enemy. These ships were to be provided with rams, and designed expressly to break the blockade of such of their ports as were not blockaded by the iron-clad monitors of the enemy. Five of these vessels were contracted for in England and three in France. Due precautions were taken against contravening the laws of England in the construction and equipment of these vessels. Three have been completed; but owing to the unfriendly construction of her neutrality laws, the government of England stationed several war vessels at the mouth of the Mersey and prevented their departure from England. Subsequently they were seized by the British government."

We shall have to discuss with M. Bravay and Messrs. Laird the validity of this seizure, and it can be more conveniently done in another place than it can be done here; but, as between this country and the confederate government, we seem to have information from headquarters of a character perfectly unquestionable, and we know, therefore, as a matter of fact, that these ships were being built in violation of our laws, and for the purpose of being used in the belligerent service of the Confederate States. When I say "in violation of our laws," it is not, of course, for the purpose of entering into any legal argument; but I invite any one who wishes to inform himself to read the judgment of Baron Bramwell, which was adverse to the government in the case of the *Alexandra*, and then I would ask whether it is not perfectly clear that, applied to ships of this character and description, it would not establish an infraction of our foreign enlistment act. The House, I hope, will believe that the government have not merely stumbled on the prevention of a gross and most dangerous infraction of our laws; that we have not done what we have only by accident; but that we had some information that our inquiries did lead to a result which, in the judgment of her Majesty's responsible advisers, not only authorized them, but made it their absolute duty to seize these vessels. As to Mr. Adams's dispatch to Mr. Seward, stating that the matter had been reconsidered, owing to the effect of Mr. Adams's note of the 3d instant, Mr. Adams may credit himself with his note having such influence, but I believe that the effect of the note of the 3d was the same as the previous notes, which had not led her Majesty's government to determine to take action against these vessels until the course of their own inquiries led them to believe there was decisive evidence of their destination. Undoubtedly the note of Mr. Adams was entitled to attention as the representation of a friendly government; but nothing is further from the fact than the supposition that her Majesty's government, having no other grounds for the action which they took, except the suggestions of Mr. Adams in that note, took it only under the influence of the considerations presented to them by him. Her Majesty's government took the step of detaining the vessels during the continuance of their own inquiries, and when the evidence was as yet incomplete, because those inquiries at that time had reached a point which led them to believe they would lead to actual and positive information, making it clear, one way or another, that those ships were or were not intended for the Confederate States. If they were not, there would be a satisfactory end of the entire matter. If they were, it was our duty to prevent any evasion of the laws of the country. With regard to the present state of the case, I frankly confess that I regret having to speak of it as pending and awaiting decision. I confess that it would be satisfactory if the case were further advanced. All I can say is that the law officers of the Crown have been and are most anxious that it should be proceeded with with due dispatch. On the other hand, I think the House would blame those whose duty it is to prepare for trial if they did not take pains to proceed to that trial under circumstances most favorable to the country and the government. It was considered impossible to prepare for trial after last term, and no trial can now take place until

May next, but then the case will be quite ready, and it will turn out, as I believe, that no time has actually been lost. I have stated now all that it is the necessary duty of the government to state upon this subject. It is impossible that the case of the government can now be brought before the House; but the government have acted under a serious sense of their duty to themselves, to her Majesty, to our allies in the United States, and to every other nation with whom her Majesty is in friendship and alliance, and with whom questions of this kind may be liable hereafter to arise. Under a sense of that duty they have felt that this is not a question to be treated lightly, or as one of no great importance. If an evasion of the statute law of the land was really about to take place, it was the duty of the government to use all possible means to ascertain the truth, and to prevent the escape of vessels of this kind to be used against a friendly power. It was their duty to make inquiries, and to act if there was a good ground for seizure, taking care only to adopt that procedure which was justified by the circumstances. On the other hand, the government will act, as they always have acted, upon the principle that no seizure of this kind ought to be made, except upon evidence satisfactory to their minds of an actual violation of the law. Upon such evidence we have acted in this case. The only question which really arises is this: Were the government justified, or were they not justified, in taking upon themselves to say that at a time when they were already in possession of some, though imperfect, evidence, and pending inquiries which might result in attaining, and which in their judgment did attain, such satisfactory evidence, they would not permit the ships to be removed until that inquiry was complete, and until they had the means of knowing whether further evidence which would prove the guilt or innocence of these vessels was likely to be forthcoming? The House will judge whether or not the government did exceed their duty, but they would certainly have been grossly wanting in their duty if, after the experience they had had in the case of the Alabama, and while their inquiries were pending, they had not been willing to take on themselves the responsibility of saying that they would not permit justice to be evaded until they could fully satisfy themselves whether the ships ought to be seized or not; and if they had not relied on the fair and candid judgment of the country, knowing, as the country must know, that they had been actuated by no other motive but that of vindicating the law, and of doing to other countries that which they expect other countries to do to them.

Mr. Horsfall said he wished, in the first instance, to thank the honorable member for Horsham for the very able and clear manner in which he had brought the subject under the consideration of the House. The attorney general had said that his honorable friend had asked for papers—which were just the papers the government could not place before the House, namely, the documents intervening between the 1st and 3d September—but the honorable and learned gentleman had forgotten to remind the House that Mr. Adams had stated that those papers did not add any additional evidence to that already known. The attorney general had told the house that the government had no wish to oppress the commercial interests of the country; but he (Mr. Horsfall) should like to know upon what ground they had refused to Messrs. Laird their permission to complete the vessels whilst they were in possession of the government—a course which would have increased the value of the vessels to the government, and would have enabled the Messrs. Laird to receive the last installments payable for the vessels. That course of conduct certainly amounted to oppressing the commercial interests of the country. The honorable and learned gentleman had alluded to the case of the Alexandria; but he (Mr. Horsfall) should have thought that that was the last case to which he would have alluded—a case in which a jury of British gentlemen had given a clear and unanimous verdict against the Crown, and in which the judges had refused an appeal. The honorable and learned gentlemen, however, took a different view, and thought that upon a further appeal that decision might be reversed. He (Mr. Horsfall) did not think the honorable and learned gentleman had improved his position by reminding the House of the course which had been pursued by the government in the case of the Alexandria. Upon a recent occasion, however, he had stated, in an admirable speech made in that House, that it was the duty of the government not to enforce the English law against English subjects upon mere suspicion, or without satisfactory evidence. He should like the House to consider where the satisfactory evidence was against the rams. Although her Majesty's government would not give them information, some information had been laid before the American Congress. From the papers published in America, it appeared that one of the principal evidences against these rams was a person named Chapman, who, as the attorney general would perhaps recollect, had been very properly designated at the late trial as a spy. Another witness in the case was a Mr. Clarence Randolph Yonge, who had to give a most extraordinary account of himself in cross-examination at the trial of the Alexandria. It appeared that he had deserted his wife and child at Savannah; that he went to Kingston and married a mulatto woman with some money; and that, having sold all her property, he deserted her in Liverpool, and came up to London to be a witness in that case. Certainly the government could not be congratulated on the witnesses they brought forward. In the same case, a Mr. Wilson, a very respectable man, was called on to speak to the

character of the ship; but it turned out that he had never built a ship for twenty years. It would be curious to know something of the evidence brought before the noble earl at the head of the Foreign Office. On the 31st of August the under-secretary for foreign affairs wrote to the honorable member for Birkenhead (Mr. Laird) in reference to the Alabama, in these terms:

"In a note which Earl Russell has lately received from Mr. Adams, the Alabama is described as a vessel 'fitted out and dispatched from the port of Liverpool,' and his lordship directs me to say that he would feel much obliged to you if you could inform him how far it is true that the Alabama was fitted out as a vessel of war at Liverpool before she left that port."

Mr. Laird's reply, with his characteristic frankness, was as follows:

"In reply to your letter of the 31st of August, stating that Earl Russell would feel much obliged to me if I can inform him 'how far it is true that the Alabama was fitted out as a vessel of war at Liverpool before she left that port,' I request that you will inform his lordship that I am not able, from my own personal observation or knowledge, to reply to his lordship's inquiry, as I did not see the Alabama after the first week in July, 1862, being some weeks before she sailed. In order to obtain for his lordship from a reliable source the information he has asked for, I have made inquiries from my successors in business, the firm of Laird Brothers, the builders of the vessel now called the Alabama, and I am authorized by them to state that the vessel referred to was delivered by them at the port of Liverpool, and that at the time of her delivery she was not fitted out as a vessel of war."

That letter appeared to have been transmitted to Mr. Adams by the noble earl, and he was sorry he could not join in the eulogium which had been passed by his honorable friend, the member from Horsham, on the American minister. Writing to Earl Russell Mr. Adams said:

"I cannot but regret that your lordship should have adduced the evidence of Mr. Laird in support of any proposition made to my government. I trust that I may be pardoned if I remind you that the statements made heretofore by that person in Parliament respecting their action are not such as are likely to lead to their implicit credence in any relating to his own."

Such language from Mr. Adams was insulting to the honorable member for Birkenhead, insulting to Earl Russell, and insulting to the House of Commons. He had known the honorable member for nearly forty years, during which time several severe contests had taken place between the Cheshire and Lancashire sides of the Mersey; and he defied any man to cast a slur on his character. Earl Russell had allowed this language to pass entirely unnoticed, and he could not help thinking that such conduct on his part was undignified and unbecoming a British minister. In a letter to Mr. Adams, Earl Russell pointed out that the government were advised that the information contained in the depositions was in a great measure hearsay, and that it was not such as to show the intent necessary to make the building and fitting out of these vessels illegal. Now, there was not one word in the foreign enlistment act about "building," and why should Earl Russell introduce the word? If these vessels were not to be built, surely that was an oppression of the mercantile interests of the country. It ought to be the policy of this country to encourage the building of vessels in every possible way, and no doubt that was the intention of those who passed the act. If the nations of the world were allowed to come here to get their vessels of war built, and to have their munitions of war manufactured, they would not be at the trouble of getting ship-building yards and manufactures of ammunition of their own. Therefore, if we went to war we could shut out our adversary from the means of procuring arms and ammunitions of war. It would, in his opinion, be a most fatal policy on our part to declare that no ships of war should be built in this country for other nations. It was very easy for the government, with the large public funds at their disposal, to crush the commercial interests of the country by law proceedings, but the public eye was keenly watching the government in the course they were now pursuing. For his own part, he held that the whole proceedings in the case of the *Alexandra*, and in the case with regard to the Messrs. Laird, constituted an act of the most cruel injustice, and a useless expenditure of the public money.

LORD ROBERT CECIL said he should not have presented himself to address the House had he seen any intention of rising on the part of any honorable gentleman opposite. Indeed, they generally left the lion's share of the debate to those on his own side of the House. In the refusal of information and the absence of discussion lay, perhaps, their great, if not their only means of safety. He would not travel over the same ground as his honorable friend behind him, who had treated so ably of the law and the facts. He would confine himself to the constitutional aspects of the question. The subject before them was really the legitimate jurisdiction of the House of Commons. On his side honorable members claimed the right to inquire into the whole of the proceedings which the government had taken. The attorney general, on behalf of the government, refused to acknowledge that right, and drew a very narrow circle, within which they were to exercise the privilege of inquiring into the conduct of the government. The

honorable and learned gentleman said that, as long as any matter was the subject of judicial inquiry, or as long as any point germane thereto was in that position, the House must not inquire into it. It was high time for the House to consider to what that principle amounted. It was obvious, as his honorable friend had said, that the government, if it chose, without a vestige of proof to support its case, without an atom of law to justify its action, could ruin any man against whom, for any reason, whether of political apprehension or of private grudge, it determined to point the artillery of the law. The government paid no costs, and law was costly. If it were defeated in one court the government could carry the case to another; if it were again defeated, it could turn off the question on a point of form, and thus it could so prolong and multiply proceedings that the resources of no citizen in the realm could bear up against the pressure. No similar power was known to the constitution. The government could not deprive a man of his liberty or of a sixpence of his money unless it could adduce adequate proof and valid law. Yet it could fine a man to the amount of his whole fortune, under the pressure of legal proceedings, at the end of which it would have neither law nor evidence to justify its action. No costs, however, could be awarded against it. [The solicitor general: "That is a mistake."] At all events, in the Court of Exchequer costs had not generally been granted against the government; and even if they were, it was well known that they would cover but a slight portion of the expenses incurred by the defendant. Now, there was no check on the exercise of that power, so vast and tyrannical, save one, and that was to be found in this House. It was only by the action of the House of Commons that this power of ruining a subject by process of law could be brought within any bounds or limit. Such being the state of the case, the learned attorney general told them they had no right to inquire into any matter which was the subject of judicial investigation. He (Lord Robert Cecil) granted that on ordinary occasions it would be exceedingly inconvenient in them to do so. Usually, matters must be left to the slow operations of the law. But, surely, when the government was putting a subject of the Queen under the screw, and squeezing out of him all his fortune by legal proceedings, trenching on his rights, and, in spite of adverse decisions against itself, carrying the matter from court to court, the House of Commons had a right to satisfy itself that the government was acting from legitimate motives, and that no secret and unworthy object had led it to take a course so detrimental to the interests of the country. He was bound to say that in the case under consideration there were grave grounds of suspicion. The first thing that struck one was that the rams were seized six months ago, yet only the first legal proceedings had been taken, and that with an intimation that a very lengthy commission was to issue. The peculiarity of the action of the government was, that it took advantage of every possible legal machinery in order to put off to the most remote date the final trial. That might be accidental, but it might be intentional. The honorable and learned gentleman spoke of the language of Mr. Adams as only slightly passing the bounds of moderation. Perhaps he might admit that Mr. Adams's own language warranted that description; but Mr. Adams was the representative of a foreign government, and that government had used language to which the designation of the honorable and learned gentleman was scarcely applicable. What of Mr. Seward's dispatch of the 11th of July? There had been a good deal of talk about that document in the house, and a good deal of difficulty in arriving at the real facts of the case. From the statements which had reached them from another place, he thought he was justified in coming to the conclusion that, although no official communication was made by Mr. Adams to Earl Russell of the contents of that dispatch, yet the noble lord knew perfectly well what they were. [Mr. Layard: "No."] He would not discuss the matter with the honorable gentleman, for he would, no doubt, call it special pleading. Any honorable member who would take the trouble to consult the more trustworthy representations which were made in another place, and which were not vouchsafed to the House of Commons, would, probably, arrive at the conclusion he had just expressed. Mr. Seward's language was as follows:

"Can it be an occasion for either surprise or complaint that if this condition of things is to remain and receive the deliberate sanction of the British government the navy of the United States will receive instructions to pursue these enemies into the ports which thus, in violation of the law of nations and the obligations of neutrality, become harbors for the pirates? The President very distinctly perceives the risks and hazards which a naval conflict thus maintained will bring to the commerce, and even to the peace, of the two countries. But he is obliged to consider that in the case supposed the destruction of our commerce will probably amount to a naval war waged by a portion, at least, of the British nation against the government and the people of the United States—a war tolerated, although not declared or avowed, by the British government. If, through the necessary employment of all our means of national defense, such a partial war shall become a general one between the two nations, the President thinks that the responsibility for that painful result will not fall upon the United States."

That was a distinct threat of war. The language in the dispatch read by his honorable friend the member for Horsham was also a distinct threat of war. In arguing the case of the *Alexandra* the attorney general intimated to the court, in language not

to be misunderstood, that the result of a decision adverse to himself might possibly be war.

The ATTORNEY GENERAL I never alluded to anything of the kind. I argued on general principles alone.

LORD R. CECIL said he accepted, of course, the honorable and learned gentleman's explanation of the construction he himself put on his words, but it was very evident, from the remarks of the presiding judge, that such an impression as he had adverted to had been created in the mind of the court. What he wanted to impress on the House was, that throughout these proceedings there had been a threat of war on the part of the United States. The government had failed to obtain from the courts of law and from British juries that application of the law which it desired, and consequently the only course that was open to it, under these circumstances, was to procure the utmost possible delay which the greatest dexterity in lengthening legal proceedings would enable them to obtain. They were threatened by the United States; they knew they were unable to obtain a decision in their favor in the courts of law; after the threats which had been made by the United States they did not dare to come to the House of Commons for an alteration of the law. 'What were they to do? The only course open to them was to lengthen out the proceedings to the greatest possible extent, to detain these ships by the mere prolongation of proceedings until, perchance, the complications on the other side of the Atlantic might cease, and so to obtain by an indirect and illegal method that which they could not achieve either by coming to the House of Commons for a change of the law, or by a straightforward and fair application of the instrument which existing statutes placed in their hands. But that was not the most important part of the speech of the honorable and learned gentleman. We had had a distinct avowal that the government had broken the law. The honorable and learned gentleman had acknowledged that, upon their own responsibility, without any authority from the law, they had ventured to stop vessels which had a legal right to leave the country. Now, it seemed to him that it would be an evil day in our history when it was recorded that the government, under threats of war from a foreign power, without any authority from the law to do so, had broken through every right which the subject possessed, had set at defiance every security of the law, had seized his property in violation of the law, and that then Parliament had taken no notice whatever of such an illegality. What possible inference could be drawn from the silence of the House of Commons in these circumstances? Was there any other period of our history at which such an act would have been permitted? Was there any other period at which it would have been endured that the government should violate the rights of the subject in deference to a foreign power, and yet that Parliament should take no notice of the matter? Nor must it be supposed that this was a solitary case. Last summer there was a case of precisely the same kind, to which he thought it his duty to direct the attention of the House at the time. A vessel called the Gibraltar was freighted at Liverpool with a cargo and guns for Callao. The government sent down an order that she should be detained. They did not attempt to seize her; they detained her, as the honorable and learned gentleman had expressed it, upon their own responsibility for three weeks; no application that could be made would induce them to let her go; and it was not until the matter was mentioned in the House of Commons, and pressed upon the honorable and learned gentleman, that leave was sent down from the treasury to allow her to depart. For three weeks she was detained; the contract under which she sailed was so far broken; but yet no justification of the illegality had ever been offered—no compensation given to the unfortunate individual who suffered. There was a curious circumstance connected with the case of the Gibraltar, which he thought would show the spirit in which the government had acted in reference to vessels of this kind. Among the parliamentary papers would be found a letter from the freighter of the Gibraltar, in which he said: "We are informed by the collector of her Majesty's customs for this port that if we permit you to ship the two large fort guns on board the steamship Gibraltar, that vessel will not be allowed to clear, thus preventing us from performing our charter-party with you. This action on the part of her Majesty's government is based upon the suspicion that ultimately your fort guns may find their way into the southern confederacy; the collector, in reply to our question, having informed us that, if the fort guns were for the federal or northern government, no obstacles would be placed in the way of their being shipped, stating, at the same time, that such shipments to New York were of common occurrence."

That was the statement of an officer of the government.

The ATTORNEY GENERAL. No; that letter is not from an officer of the government.

LORD R. CECIL. Certainly not; but the writer gave the statement as one made to him by the collector of customs, and he presumed he was an officer of the government, and his representation of the intentions of her Majesty's government, though printed and circulated among the parliamentary papers, had never been contradicted either by the collector of customs himself at Liverpool, or by the government. It was all very well for the attorney general sitting there to contradict it; his honor was safe, because if it should afterward turn out that the collector did make the statement, it

might be said that the honorable and learned gentleman had no communication with him; but, he repeated, no contradiction, either by or on behalf of the collector, had ever been given to that formal declaration of the intentions of her Majesty's government. It seemed to him that the case of the Gibraltar threw a flood of light upon the motives of the government in detaining the steam rams and the principles on which they acted. They claimed a right to detain vessels—not in one case, but in many—without any authority from law, upon their own responsibility, because they believed that possibly at some future time they might find evidence that some statute had been broken. They claimed that right, and in acting upon it they explained that they did so for the benefit of one side, in a contest as to which they professed to maintain a position of absolute neutrality. With such evidence before them—it being perfectly clear that their anomalous and illegal power of detaining vessels, not of seizing them, was acted upon in the interest of the federal government, and therefore might be supposed to be acted upon under the threats of war which that government was in the constant habit of addressing to ours—he thought the House of Commons would deserve those reproaches which had recently been cast upon them if they tamely passed over such a case as this. They had been accused of being the "most docile" House of Commons that ever existed, of "sneaking to their places," of allowing ministers to do what they pleased. They should really merit that charge, and should not easily be able to wipe it off, if they quietly received the threats of a foreign power, if under those threats they applied the processes of law with merciless severity, if they used all the delay and procrastination of the law for the purpose of crushing the subject, if they allowed her Majesty's government to break the law, and if they suffered them at the same time to avow that they did it on behalf of those who had addressed to them threats of war. He trusted the House would hear a more satisfactory defense of the conduct of her Majesty's government than had yet been delivered; but if no such defense was offered, he thought the House would not be doing its duty unless it recorded formally in its journals a protest against that assumption of a new dispensing power, a new power of suspending the rights of the subject, a new establishment of despotic claims, which might, perhaps, be in place in the atmosphere of St. Petersburg or of Washington, but which were entirely out of place in the atmosphere of London.

Mr. W. E. FORSTER said he was sure the House must have been struck with the great difference between the tone of the honorable member for Horsham, (Mr. Fitzgerald,) who had introduced the motion, and that of the noble and honorable member who had supported it. The honorable member for Horsham, (Mr. Fitzgerald,) in his very clear, able, and moderate speech, had restricted himself to a demand for the production of papers; and in giving reasons why they should be produced, he had expressly guarded himself against being supposed to wish for any interference with the action of the government respecting the foreign enlistment act. But the honorable member for Liverpool went far beyond that. The honorable member had read extracts from the trial in the case of the *Alexandra*, which could not be very intelligible to honorable members who had not—and he confessed himself to be among the number—read through that tedious trial. The honorable member had ended by stating that ship-builders had been encouraged, and that they should ever be encouraged, to build ships of war. He (Mr. Forster) could not help here from remarking, that if war should break out, and he heartily hoped it might not, between this country and Austria and Prussia, [Lord Robert Cecil: Hear, hear!] he was aware of the noble lord's bellicose tendencies; but supposing war broke out between us and a power which had no fleet, he did not think the honorable member for Liverpool's constituents would thank him for suggesting the argument that ships of war should be built for our enemies by our friends, France or the United States, and that American and French Alabamas should prey upon our commerce, because France and the United States thought it desirable that their ship-builders should be encouraged. The noble lord quoted a case with which he (Mr. Forster) had not before been acquainted; he alluded to the case of the *Gibraltar*. That was not the first time the House had heard the noble lord state his opinion that the government had broken through the principle of neutrality. It would be fairer to both the government and the House if instead of bringing forward such charges incidentally, noble lords and honorable members who made them introduced them by means of a direct vote of want of confidence in the government, founded on their having acted in that manner. Again, the noble lord denied that the question before them was a question of papers, and stated that it was a question whether the government should have a dispensing power. If the noble lord, after the declaration of the attorney general that these vessels had been seized upon the responsibility of the government, did not think the government had any right to detain those rams, let him bring forward a vote of censure. Coming to the motion of the honorable member for Horsham, there were two sets of papers included in the correspondence. One was the correspondence between our foreign office and Mr. Adams, or between our foreign office and our minister in America; the other, the correspondence between the government and the Messrs. Laird, the builders of the vessels. He was glad that the attorney general was willing to produce the first of these series; for he thought it would be perfectly useless of our government to refuse to publish the official

correspondence that had already been printed and circulated in America and this country. If the government did print the bulky volume the correspondence would occupy, he hoped they would not cut out too much. He hoped they would not confine themselves to the English correspondence, because, among that which referred to France a good deal of light was thrown on the interesting negotiations which were carried on last year in that country by the honorable and learned member for Sheffield (Mr. Roebuck) and the honorable member for Sunderland (Mr. Lindsay) in reference to American affairs. He felt sure that when the whole of the papers were before the House, so far from confirming the insinuation that Earl Russell had made any unworthy concessions to a foreign power, they would contradict it; but they would not afford that information which might be desired by the owners of the rams and those who spoke for them; they would not give the reason why the government had come to the conclusion that they might be able to prove a breach of the foreign enlistment act. That information might be useful to the defendants in the proceedings, but he hoped the House would see that it was information which the government ought not to give these parties. The case alleged against the noble lord the secretary for foreign affairs was that in the beginning of September he wrote a letter to Mr. Adams, in which he stated that he did not think there were grounds on which the government could interfere with those rams, and that within two or three days after writing in those terms he found there were grounds, and took measures to detain the vessels. From those facts he presumed that there had been great doubt on Earl Russell's mind as to whether there were any grounds for detaining them, and that the noble earl would not, under such circumstances, accede to the demand of a foreign government for interference; but that between the time at which he wrote his first letter and the date of his second he received information upon which he determined to act. Was it not fairly to be assumed that the noble lord having got certain information acted upon it, and that he determined to detain these ships solely from what he knew, and not upon representations made by the American minister? No doubt it would be exceedingly useful for the purposes of some persons to find out what induced Earl Russell to suppose that the statement which had been made as to the French destination of the rams was untrue. But would the House allow itself to be made use of for the purpose of acquiring such information? Then as to the general question, it was a matter of notoriety on this and the other side of the Atlantic, that in the yard of the Messrs. Laird, where the Alabama had been built to commit depredation after depredation upon American shipping, steam rams were in preparation to follow the example of the Alabama, and inflict much more serious injury on American interests. The attorney general had read a letter detailing the plans resorted to by the confederate government to induce British subjects to violate British neutrality. Any honorable gentleman who was in the habit of watching the news which came from America would be aware that for months previous to the detention of these rams a fear was expressed in the North and a hope in the South that they would issue forth; and that being so, and the government having reason to believe that the rams were intended for the confederate government, they took upon themselves the responsibility of detaining them, under the provisions of the foreign enlistment act. Well, then, if the noble lord or honorable gentlemen opposite thought that the government deserved a vote of censure for so doing, let them boldly propose such a vote, and say that they would not have done the same thing. It was his full belief that they would have done the same, not from any fear of war with America, but solely from a sense of what was required by English interest, which they, no doubt, had as much at heart as the present government had. The noble lord seemed to think lightly of a war with America; but that was not the feeling of the country, nor did he believe it could be the feeling of the opposition generally. Much had been said about Mr. Seward's dispatch. He was not there to defend Mr. Seward, who might not, perhaps, write with taste or elegance, but it showed the necessities of honorable gentlemen opposite that they were obliged to cite dispatches which had never been presented. No doubt that dispatch threatened England with war if these rams went forth; and if the case had been reversed, if an Alabama had sailed from an American port to prey upon English commerce, and we heard that she was to be followed by a fleet of rams, we should not merely have threatened, we should have declared positively that we should regard such an act as an act of war. These men were our descendants, and we ought, therefore, to put ourselves in their position, and to consider what we should have done in a like case. But the question was not one of peace or war alone; it was a question of English interests. If the precedent of the Alabama were to be followed, what was the use of our navy? What would be the use of blockading the ports of even a weak country? Why, in the event of war, we should be obliged, if this precedent were allowed, to blockade the ports of every neutral nation. With such tremendous interests at stake, therefore, with the possibility of a war against America, and not in a just cause, with our position as a great maritime country thus imperiled, with the enormous expenditure into which we should have been led had we allowed a breach of the law as between neutral and belligerents if the government had neglected their

duty in the matter of these rams, he believed that nobody would have been more ready to blame than honorable gentlemen opposite.

SIR HUGH CAIRNS. Sir, in the observations which it will be my duty to make, I shall endeavor to bring back the House to the precise question on which we are called to vote; and I will begin by subscribing sincerely to what was advanced by the honorable and learned attorney general when he called on the House to acknowledge the impropriety of discussing the production of papers which would prejudice or affect pending legal proceedings. Sir, if I thought that the production of these papers would affect pending legal proceedings, or that they were moved for to answer any such purpose, I should be the last person to support the motion. But I believe that it can have no such effect, that their production is intended to have no such effect, and that every word which has fallen from the learned attorney general on the subject will show that it would not have that effect. The papers asked for may be divided into two classes. One is the correspondence between her Majesty's government and the government of the United States with regard to these ships; the other consists of correspondence of a different kind between the government and the firm of Messrs. Laird, the builders. Now, I think it is very material to state clearly the purpose to be served by the production of these papers. With regard to the first class of papers, the object in asking for them is not to raise any question about our municipal statute, the foreign enlistment act, or as to the merits or demerits of the case of the ship-builders under that act, but to ascertain what the House of Commons is most interested in knowing, namely, the demands grounded upon international law which have been made by the United States government respecting these ships, and the answers which have been given to these demands by the government of this country. I can conceive no question so vital as this, and, at the same time, I am sorry to say that there is no question at the present day upon which the House of Commons has less information. I would ask honorable members—I care not on which side of the house—"What do you conceive to be the precise demands made by the United States government upon her Majesty's government, respecting the departure of ships from this country, and what do you conceive to be the attitude taken by the British government in reply to these demands?" Why, I defy any person, judging from any paper laid before the House of Commons, to state with satisfaction what those demands and the answers have been. And yet this is the point which the House of Commons wants to know. We do not want to know the construction of the foreign enlistment act, and whether that act has or has not been violated. That is the business of the courts of law, and they will attend to it. But we want to know what is certainly our business. What has Mr. Seward alleged to be an infringement of international law in this matter? Has he said that it is an infringement of international law for armed ships to leave this country, or for unarmed ships to do so if they are subsequently armed? And, if so, what answer has been returned by the government of this country? Sir, I will assign one good reason for complaining of the state of doubt in which we have been left upon this point. In the wretched scrap of correspondence which has been laid before the House—the correspondence which is said to have passed during last autumn between the United States government and the government of this country; it ought not to be called a correspondence, for it consists only of three letters, with a great number of claims sent in by the United States government—in these papers I find that Earl Russell, on the 27th of March last, wrote a dispatch to be communicated to the American minister, and in that dispatch he said that he wished the United States government to understand that he considered the case of the Alabama and the Oreto to be a scandal. The honorable under-secretary of state (Mr. Layard) nods his head in approval of that expression. Now, I can assure the House that I am not going to express the least opinion upon the subject, because I know nothing about the facts relating to the Alabama. Of course, I know what she is doing now. That is a matter of notoriety. But what did Earl Russell mean by saying that the case of the Alabama and the Oreto was a scandal? Did he mean that it was a scandal because, having laws to punish such a case, we did not enforce them? The under-secretary of state shakes his head at this. Well, then, did Earl Russell mean that it was a scandal that we had no laws to punish such cases? He must have meant one of these two things. I have the disclaimer of the under-secretary as to the first. [Mr. Layard: "No!"] Oh, then, that shake of the head is withdrawn. It is always dangerous to pin yourself to one horn of a dilemma until you have heard the other. Now, let us suppose that the noble lord thought the case of the Alabama and the Oreto was a scandal because that, having laws to punish, they were not put in force. Then I will ask this question—I know it is true that it is said, and it has been repeated here to-night, that the Alabama left this country without there being an opportunity for the government to seize her as a forfeited ship. But I want to know this. The persons who were concerned in building the Alabama, and in sending her out of the country, were well known, and they never disputed the fact. I believe that in this House an honorable member stated the whole circumstances connected with the case, and the names of all the parties concerned. There is no doubt about the facts relating to the Alabama, and I want to know this:—Supposing that the ship did leave

this country, and that there was not time to seize her as a forfeited ship; yet if the laws of the country were violated, why did not the government indite the persons who admitted openly that they had sent the Alabama out of the country? Remember, if there is a case for seizure, there is also a case for an indictment for a misdemeanor. If the noble earl meant that it was a scandal because, having laws, those laws were not enforced, I want to know why the government has not put them into force, in place of having these desultory and repeated allusions to the Alabama as a case in which some misdemeanor and infraction of the law has been committed. Now, take the other case of the Oreto. That case was mentioned in this House last year. I remember well that the honorable and learned attorney general stated that the Oreto left this country and went to Nassau, and these were his words: "We strained a point." The attorney general has strained more than one point, as we shall see before all is over. He said on March 27: "To show our good faith to the American government we strained a point, and we seized the Oreto at Nassau, where she was tried and acquitted." And the Crown brought no appeal against the decision of the vice-admiralty court at Nassau, so that the Oreto stands a ship pronounced free from any breach of the provisions of the foreign enlistment act. I want, then, to know, as to the Alabama and the Oreto, what it was the noble earl meant when he said the case was a scandal. But I have not done with the case of the Alabama. It was a most singular coincidence that on the very day the noble earl was writing his dispatch to the United States government containing those remarkable words, which we may be sure will not be forgotten by our friends across the water, upon that same day the honorable member for Bradford, Mr. W. E. Forster, in this House appealed to the noble lord at the head of the government as to the case of the Alabama. The honorable member stated fairly and ably, as he always does, his views as to the Alabama, and he called upon the noble lord to say that the Alabama had been guilty of an infringement of our laws, and to smooth over the matter to the American government by acknowledging that there had been some remissness, which was much to be deplored. Upon the same day that the secretary of state for foreign affairs, writing to the American government, said the case was a scandal, the noble lord at the head of the government, addressing an English audience and the House of Commons, said:

"I have myself great doubt whether if we had seized the Alabama we should not have been liable to considerable damages. It is generally known that she sailed from this country unarmed and not properly fitted out for war, and that she received her armament, equipment, and crew in a foreign port. Therefore, whatever suspicions we may have had—and they were well founded, as it afterward turned out—as to the intended destination of the vessel, her condition at that time would not have justified her seizure."

That is, to justify her seizure from any infringement of the law. But if there had been no infringement of the law, why was the case a scandal? If there had been any infringement of the law, why were not the persons—whose names were well known—who sent out the vessel, why were they not indicted? Then, as the Oreto was tried and acquitted, why is her case a scandal? Now let us take the other branch of the dilemma. Did the noble earl mean that the case was a scandal because we had not a better law to deal with the cases of the Alabama and the Oreto? Then, I ask, why have not the government—if such be their opinion—why have they not proposed an alteration of the law? The noble earl, the foreign secretary, has more than once suggested that the government might come to this House and propose such an alteration. I ask, if it was the opinion of the noble earl that this case was a scandal to our laws because we had no law to meet it, why, as he remained in the government, did he not propose an alteration of the law? Then, again, we have upon the very same day a declaration from the noble lord at the head of the government. While the noble earl was sending off his dispatch to the government of the United States, the noble lord said in this House, as to any alteration of our law:

"I do hope and trust that the people and government of the United States will believe that we are doing our best in every case to execute that law; but they must not imagine that any cry which may be raised will induce us to come down to this House with a proposal to alter the law. We have had—I have had—some experience of what any attempt of that sort may be expected to lead to, and I think there are several gentlemen sitting on this bench who would not be disposed, if I were so inclined myself, to concur in any such proposition."

That, I think, was a sensible view, and I can only wonder at and want an explanation of the dispatch to our good friends across the water, leading to the belief that the opinion of our government was wholly different. I must say another word as to this. We are told that these words of the noble earl—and very strong words they were for a minister to use—were referred to elsewhere, and the noble earl was asked to explain them. The noble earl explained them in this way. He said in substance: "I adhere to the opinion, and my reason is this: How can you describe in any other words an act of Parliament as to which the chief of one of our courts of law has said, 'You might sail a fleet of ships through it?'" That explanation again will go across the water,

and will be read by our friends on the other side of the Atlantic, who will find it asserted that the chief of one of our courts has declared of the foreign enlistment act that a fleet of ships might be sailed through it. Will the House believe it possible that the noble earl could have fallen into the error I am going to expose? What that very eminent and learned person said was this:

"If I were to adopt the construction which the Crown desires to put upon the foreign enlistment act, which I do not adopt, which I reprobate as false and erroneous, then, indeed, you might not drive a coach and six, but might sail a fleet of ships through the act of Parliament."

Now, I think I have shown sufficient reason why the House of Commons should be anxious to have a full statement, not merely from American reports and publications, but a full statement from our own ministers of the correspondence which has passed between the British government and the government of the United States. I now come to the second portion of the papers which have been moved for—the correspondence between the different departments of the government and the Messrs. Laird, who are said to have been the builders of these ships. I wish to repeat, most emphatically, that I will endeavor not to say one word which can by any possibility verge upon whatever may be the merits of the case to be tried between the government and the persons connected with these ships. I agree that nothing should be said in this House to prejudice the pending case, but I wish the government had followed a similar course. I cannot help reminding the House, as it has been referred to prominently by the attorney general, of what the government have been doing all the time these ships have been detained or under seizure. The attorney general, as I understand his views, says that nothing must be said to prejudice the case of the government, but anything that will prejudice the case of the individuals with whom the government are in litigation is fair and right, and all the more fair and right if it comes from a member of the government. Let us take as a specimen a speech of a foreign secretary to the people of Blairgowrie, which we may presume is correct, as the American minister has reported it to his government, observing that the altered tone of Lord Russell greatly pleased him. Now, what was the new tone which so delighted the American minister? Upon the 9th of September these rams were seized. [The attorney general: "Detained."] Yes, detained. The correction is important. They were detained on the 9th or 10th of September. About a fortnight or three weeks afterward, addressing a select audience, who, no doubt, were most competent judges upon these matters, the noble earl treated them to his views upon the foreign enlistment act. He said:

"There are other matters with regard to ships that have lately been prepared within this country, because these ships are not like ships that receive the usual equipment; they are not like vessels you sent in former times of war, but are in themselves, without any further armament, formed for acts of offense and war; they are steam rams, which might be used for purposes of war without ever touching the shore of a confederate port."

The good people of Blairgowrie no doubt attached a different meaning to the word "rams." The noble earl went on to say:

"Well, gentlemen, to permit ships of this kind knowingly to depart from this country, not to enter into a confederate port, not to enter the ports of a belligerent, would, as you see, expose our good faith to great suspicion."

I wish the house to remember what was the condition of affairs at that time. Messrs. Laird were the builders of these ships. They were said to have been built for a foreigner, M. Bravay, of Paris, and the allegation was that that statement was incorrect, and that, instead of being built for M. Bravay, they were intended for the confederate government. That was a matter to be proved by proper evidence. While the question is in this state, the noble foreign secretary thinks it is not prejudiced by his going to a select audience of his own choosing, and telling them that it is quite clear that these rams were intended for the confederate government; and the American minister says, "This is the true tone." But now I come to my honorable and learned friend, the attorney general. He, following the example of the noble earl, addressed his constituents, and what did he tell them?

"On the other hand, he hoped and believed that the people of the country at large would not be inclined to identify themselves in feeling with those merchants of ours who seemed to think that they were bound by no obligation to our laws at all."

No doubt, if such an expression had fallen from the honorable member who sits below the gangway, it might not have been of the slightest consequence, no importance would have been attached to it. But it is very different when it falls from the first law officer of the Crown, who is charged with the prosecution of such offenses.

"He hoped and believed that the people of the country at large would not be inclined to identify themselves in feeling with those merchants of ours who seemed to think that they were bound by no obligation to our laws at all, and that it was perfectly fair for them, if they chose, to carry on an unlawful trade with a belligerent power, while at the same time they know that government were anxious, for the sake of the nation, to preserve a strict neutrality."

Who were referred to? Of course I must pay the government the compliment of

saying that if there were any merchants evincing a total disregard to the law, they would have prosecuted them. Therefore this could only refer to the cases *sub judice*—the Alexandria and the team rams; and yet we have the first law officer of the Crown going down to his constituents and saying, before the cases were tried, that the defendants in these cases had clearly violated the law. But this is not all, because we find the president of the board of trade also followed suit. He went down to Ashton and addressed his constituents, and I must say he went deeper into the subject than either of those who preceded him. He told the people of Ashton:

"I don't know whether any gentleman here has taken the trouble to read the legal arguments upon this question; but really I confess, for one, that I am unable to understand much of what has been said upon the subject. I am told that you may sail a fleet of ships through the foreign enlistment act. It may be so; but I will undertake to say that I will sail another fleet of ships through the construction which any of the lawyers has hitherto put upon that act. Common sense tells me that the confederate government are the parties who have, directly or indirectly, caused these ships to be built in this country, and that in so doing they entered upon a deliberate course of violating and evading the laws of England. I am no lawyer, but that is my construction, and I do not think you can sail a fleet of ships through that."

Yes, the laws of England, which the right honorable gentleman says he does not understand, he nevertheless maintains have been violated; the common sense which does not enable him to understand the law, does enable him to say that these parties had entered on a deliberate course of violating the laws of England. "I am no lawyer, but that is my construction, and I don't think you can sail a fleet of ships through it." That was followed by great laughter. Well, but this is not, after all, a matter for drollery. Suppose this were a question of life; suppose a prisoner waiting his trial on a government prosecution for high treason, and suppose the attorney general, a secretary of state, and another cabinet minister went about addressing their constituents, and saying: "Don't talk about the law; never mind that; there are no doubt forms of law to be gone through, but it is as certain as the sun shines the man is guilty." The attorney general deprecated any word which might drop from any speaker that might prejudice the case of the Crown, but he talked much of doing to others what you would desire others to do to you; and then he said: You talk of papers laid before Congress; another paper was laid before another congress; and he read a paper said to be signed by the under-secretary of the confederate government, stating something about iron-clad vessels being built in England, and connecting them with the rams in the Mersey. And he said, as a matter of fact, there could be no doubt these rams were intended for the confederate government. Now, that is the very point *sub judice*. But does the attorney general not know—what I suppose every other member but himself knows—that a gentleman, as I am informed, of high position in the Confederate States has written a letter to the newspapers, in which, referring to the paper which the attorney general read to-night, and which was also published in the newspapers, he has declared it to be a gross forgery! But so the fact is; such a statement has been made, and made as publicly as the other document; and the person who has made that statement has added that any one conversant with the manner in which documents are laid before Congress would know that it was not usual for documents in that shape or form to be laid before Congress. Now, I want to state precisely the objects for which, I think, this second class of documents, the correspondence between the government and the Messrs. Laird, ought to be produced. It is not for the purpose of affecting the merits of the case, either as against the Crown or the Messrs. Laird, that I support their production; it is for the purpose of seeing what course was taken by the government anterior to the seizure of these vessels, a course which raises constitutional questions of as great importance—I say so deliberately—as were ever brought before this House. I speak with full consciousness of the gravity of the expressions I use when I charge the government—let there be no mistake—I charge the government with having done, and after hearing the attorney general to-night, I say having done, on their own confession, what was illegal and unconstitutional, without law, without justification, and without excuse. We are told, not by documents laid on the table—we have had to search as best we could for documents elsewhere—we are told that on the 31st of August Earl Russell answered a memorial presented to him by four representatives of the Peace Society, who asked him to detain these rams in the Mersey. I will read to the house the material parts of that reply:

"GENTLEMEN: I have received your letter, calling my attention to a subject of very grave and pressing importance, namely, the fitting out and equipping of two powerful iron-plated steam rams, which you are informed are intended to commit hostilities against the government and people of the United States of America. My attention has long been directed to this subject. Both the treasury and the home department have, at my request, made the most anxious inquiries upon the subject of these steam rams. You are aware that, by the foreign enlistment act, a ship is liable to be detained, and its owners are subject to penalties, when the ship is armed or equipped for purposes of war, and its owners intend to use it against some state or community in friendship

with her Majesty. It is necessary to prove both the equipment and the intention. But in order to prove the equipment and the intention, it is necessary, for conviction in a British court of justice, to have the evidence of credible witnesses. I was in hopes, when I began to read your memorial, that you would propose to furnish me with evidence to prove that the steam rams in question were intended to carry on hostilities against the government and people of the United States of America; but you make no proposal of the sort, and only tell me that you 'are informed' so and so, and 'it is believed' so and so. You must be aware, however, that, according to British law, prosecutions cannot be set on foot upon the ground of the violation of the foreign enlistment act without affidavits of credible witnesses, as in other cases of important misdemeanors and crimes. Such, likewise, is the law in the United States of America."

That was on the 31st of August. On the 1st of September the noble lord wrote to Mr. Adams, and said this:

"In the first place, her Majesty's government are advised that the information contained in the depositions is in a great measure mere hearsay evidence, and generally that it is not such as to show the intent or purpose necessary to make the building or fitting out of these vessels illegal under the foreign enlistment act. Secondly, it has been stated to her Majesty's government at one time that these vessels have been built for Frenchmen, and at another that they belonged to the viceroy of Egypt, and that they were not intended for the so-called Confederate States. It is true that in your letter of the 25th of July you maintain that this statement as regards French ownership is a pretense, but the inquiries set on foot by her Majesty's government have failed to show that it is without foundation. Whatever suspicion may be entertained by the United States consul at Liverpool as to the ultimate destination of these vessels, the fact remains that M. Bravay, a French merchant residing at Paris, who is represented to be the person upon whose orders these ships have been built, has personally appeared, and has acted in that character at Liverpool. There is no legal evidence against M. Bravay's claim, nor anything to affect him with any illegal act or purpose; and the responsible agent of the customs at Liverpool affirms his belief that these vessels have not been built for the confederates. Under these circumstances, and having regard to the entire insufficiency of the depositions to prove any infraction of the law, her Majesty's government are advised that they cannot interfere in any way with these vessels."

That was the conclusion of the noble lord on the 1st of September; that having regard to the entire insufficiency of the depositions to prove any infraction of the law, her Majesty's government were advised that they could not interfere in any way with these vessels, either by seizure or in any other manner. Well, the next step was this: The noble lord has stated elsewhere that on the 3d of September, the next day but one, he had made up his mind to detain the rams, and that he wrote a private letter to the noble lord at the head of the government stating that he had given orders for their detention. Facts of an important description, which, of course, he was not in any way obliged to mention—and I quite agree that it would be wrong for him to mention them—but important facts came to the knowledge of the government between the 1st and the 3d of September, which led to their entirely changing their intention, and resolving to take proceedings against the rams. At some future time we may perhaps hear what these facts are which in so brief an interval came within their cognizance. But what we find was this: The noble lord determines to detain the ships on the 3d of September; and I cannot help thinking there were very just grounds for the question of my honorable friend the member for Horsham, [Mr. Seymour Fitzgerald:] If you had determined on that day even to detain these rams, do you think it was fair, candid, and above-board for you to write to the Messrs. Laird on the 4th of September a letter which—even granting that they invited it, and that it was in consequence of some statement they made—was entirely calculated to mislead them as to your views and intentions? For what does that letter amount to but this: "We understand you to be good enough to say that although you will not volunteer the information, yet if you are asked officially for whom you are building these ships you will tell. Be good enough, then, to let the foreign secretary know for whom they are being built." And accordingly, on the 5th of September the Messrs. Laird unsuspectingly say that "the Messrs. Bravay allow us to send you their name." Yet all the while the foreign secretary, in concert with the noble lord at the head of the government, had resolved to take that step which he never breathed to the Messrs. Laird, and which he never communicated to them till the 9th of September. Well, on the 9th of that month this letter was written to those gentlemen, and I ask the house to reconcile it if they can—I confess I cannot—with the statement we have heard as to the important information which arrived between the 1st and the 3d of September, and which made the government change their views. It is written by the secretary of the treasury to the Messrs. Laird, and runs thus:

"GENTLEMEN: I am desired by my lords commissioners of her Majesty's treasury to acquaint you that their lordships have felt it their duty to issue orders to the commissioners of customs that the two iron-clad steamers now in course of completion in your

dock, at Birkenhead, are not to be permitted to leave the Mersey until satisfactory evidence can be given of their destination, or, at least, till the inquiries which are now being prosecuted to obtain such evidence shall have been brought to a conclusion.

"G. A. HAMILTON.

"Messrs. LAIRD BROTHERS."

Well, but if all the facts had come to the knowledge of the government—

The ATTORNEY GENERAL. I said that "some information" had been received.

SIR HUGH CAIRNS. Well, let it be "some information." This information, according to the attorney general, entirely changed the view of the government, and produced a conversion as sudden as anything we have heard of in history. Remember, I am willing to attribute the conversion to this information, and not to the force of Mr. Adams's letter. I take the statement of the government by their organ in this house to-night that "important facts"—"some" facts if you like—had come to their knowledge between the 1st and the 3d of September, which satisfied them as to the destination of these rams. But if that were so, how came you, on the 9th, to write as regards the detention of the rams, that your intention was to keep them "till the inquiries which are now being prosecuted to obtain such evidence shall have been brought to a conclusion?" But so it was, and then the detention of the rams took place. The detention occurred on the 9th of September, and the seizure on the 9th of October, exactly one month afterward. It is said also that during this time the detention had this operation—that the Messrs. Laird were not allowed to take the ships out of their dock on a trial trip, although they gave their personal undertaking to bring them back again after the trial trip was over. It is said, I know not how truly, that that permission was first given by the government and then withdrawn; but I don't care about that, or about the case of the Messrs. Laird. I beg the House to dis sever this matter from the case of individuals. It may, or it may not, have been more or less irksome to the Messrs. Laird, but I ask the House to look to the grave constitutional question involved. I demand to know from the government, for we have not been told yet, what was their authority for detaining those rams on the 9th of September. Does the attorney general say there was law for it? No; there is none. Does he say there is constitutional practice for it? No; there is none. But what he says—and I commend his answer to the house for their edification—is this: "We violate the law in order to vindicate the law." For he says: "There was no reason to seize—there was no evidence—nothing had been done which gave us that right; but we remembered what we thought had occurred in other cases; we remembered that ships had been expeditiously fitted out and sent from this country, and we had been unable to stop them; we were determined that that should not occur again." And, therefore, while no crime had been committed, ["Oh!"] why, if a crime had been committed, you had a right actually to seize, but while no crime had been committed, while no evidence was obtained, while the government were afraid to seize the ships, they detained them, in order that it might be, in the course of weeks or of months, they might procure their evidence, and make out their case. Now, I will take the attorney general's own analogy. He asks, "What do you do with a person accused of committing a crime? You take him before a magistrate, who receives certain evidence, and may remand him for a certain time that more evidence may be obtained." The attorney general forgot that here there is a seizure. The seizure is the arrest. The moment you arrest a man, which the law allows you to do, on a charge of felony or misdemeanor, you act strictly within the law. The moment you arrest him you have made the seizure, and the law also says in the interests of justice that the magistrate may remand him within certain limits and for a certain time while evidence is being produced; and, moreover, there are safeguards in the *habeas corpus* against the abuse of authority there. But that is not the case here. You say, indeed, that you acted on your responsibility. Is not that the same wretched pretense which from the worst days of despotism downward has always justified the acts of the executive government? Has not every breach of law committed by the executive been done on their own responsibility? Were not general warrants issued on the responsibility of the government? It is no answer to say that the individual may have his action for damages where there has been a breach of the law. If I remember rightly, the persons who were arrested under general warrants had rights of action and recovered damages. Yet, although that was so, although the government said they had acted for the safety of the state, and on their own responsibility, the House of Commons solemnly pronounced the sentence that general warrants were illegal and unconstitutional. And I say again, that what was done in regard to these steam rams at Liverpool was as illegal and unconstitutional as any act ever committed by the executive government since the time of which I have spoken. Well, it has been suggested on behalf of the government that after all a seizure and a detention are not very different; that seizure is the greater, and detention the less; that there was no greater interference with the Messrs. Laird and the enjoyment of their property by the one than by the other. I care nothing about what the exact amount of that interference may have been, but I do want to know from the government—and I hope we shall have this question plainly

answered before this debate is over—I want to know whether the government really mean to claim the right to detain ships building all round the various ports of England, on the request of the American government, until inquiry shall have been made, or until the ship-builder, having the onus cast upon him, shall discharge it—the onus of showing the destination of the ship? If that is the claim of the government let us hear it, and we shall know how to deal with it. If that is not their claim, how do they justify the detention of the ships in the Mersey? If they were right in September in detaining these vessels for a month, they will be right anywhere in England in detaining any ship merely on suspicion. But is it the fact that detention is less injurious than seizure? It requires no great skill to answer that question. If the government seize the ship they do the very thing that an act of Parliament authorizes; they commit no aggression on the law; and, moreover, the person whose ship is seized has a right to drive on the government, to make them continue the proceedings in a court and bring the ship to trial, and then it will be declared whether or not he is an offender against the law. But if you detain the ship, how can the owner bring the case to trial? I want to know from the government; and I trust that the House of Commons will demand from them an answer to this: How long do they claim a right to detain a ship? Do you claim it for one month, for two, for three, for six, or for twelve months? If you do not, where do you draw your line? What right have you to detain her for one month if you can't detain her for twelve? Sir, I cannot help contrasting the course taken by the government in September, 1863, with some words which fell from the noble lord the first minister on the 27th of March, 1863. Speaking in this house on that occasion the noble lord said:

“Her Majesty's government will continue, as I maintain they have done hitherto, to enforce the law, whenever a case shall be brought before them in which they can safely act upon good and sufficient grounds: there must, however, be a deposition upon oath, and that deposition must be made upon facts that will stand examination before a court of law; for to call upon us arbitrarily and capriciously to seize vessels with respect to which no convincing evidence can afterward be adduced, is to ask the government to adopt a course which would cast discredit upon them, and lead to much subsequent difficulty and embarrassment.”

If you cannot capriciously seize a ship, what is that to be called which is the detention of a ship without cause for seizure, in order that you may, if it may be, obtain a case for seizure? On the same day, the 27th of March, the attorney general, then solicitor general, laid down some very good constitutional law, which I am afraid he has forgotten. He said:

“The United States government have no right to complain of the act in question; the foreign enlistment act is enforced in the way in which the English laws are usually enforced against English subjects.”

Now, where is your English law which authorizes you against an English subject to detain property under such circumstances?

“On evidence and not on suspicion; on satisfactory testimony, and not on the mere accusations of a foreign minister or his agents.”

And the honorable and learned gentleman went on to say:

“I might, perhaps, understand such a complaint if grounded on some such theory as this: That because the safeguards of liberty have been suspended under circumstances of civil war in the United States, therefore that they should be suspended in this country too, and the officers of our government should do illegal acts and violate the law on mere accusation and suspicion.”

Six months have not passed over before the honorable and learned gentleman—advising, as I suppose, the government—was guilty of the very offense which he reprobated then when he said that it was unjustifiable in the United States to ask us to imitate their conduct. There is another matter connected with this which is of great importance, and to which I invite the attention of the right honorable gentleman the chancellor of the exchequer. The house is aware that very large and extensive demands have been made by the government of the United States against this country for injuries occasioned by the Alabama. These demands were made during the whole of last year, and now amount to a sum which I am afraid to mention. Last year I heard the government on more than one occasion defend themselves against these claims, and I thought on very good grounds. I thought that the claims were most unfounded. I thought there was no pretense for alleging them. I accepted the defense of the government. But what was that defense? The defense of the government was this: “You complain of the Alabama. Well; assume for a moment that at the time of her departure from England she had been guilty of a violation of the foreign enlistment act, which we think doubtful; but, assume that she had, she was built under such circumstances, and with such speed, that no reasonable diligence on our part could have prevented her leaving.” But said the American minister, “Oh, yes; but I told you a considerable time before—I told you many weeks before—the reason that we had for suspecting her destination; and I gave you statements—some of them upon oath, and some not upon oath—which made it impossible but that any one should at all

events feel a doubt whether that was not her destination." "Yes," said the government, "but we have no law which enables us to interpose in a case of that kind. We cannot detain a ship—we cannot act upon suspicion. If you show us a case which enables us to seize, then we can seize and abide by the consequences, because the law enables us to do that; but the law does not enable us to do what your American law may do," and I believe does—"it does not enable us to detain a ship merely on circumstances of suspicion, in order to make inquiry. Therefore," said the government to the United States last year, "your claims with regard to the Alabama are unfounded; for we did all that the law and constitution of the country allow us to do." But what becomes of that now? What will you say to the American minister now? Do not you suppose that the American minister will come to you and say, "You told me last year that unless you had a case for seizure, and proof by proper evidence, you could not arrest a ship at all—that you could not detain her? Although you admitted that the facts I brought before you created very great suspicion, you said that you could not seize the Alabama; therefore, you could not touch her. But look at what you did in September. For a whole month you detained these steam rams in the Mersey, while, according to your own words, you were collecting evidence and endeavoring to see whether your suspicions were well founded." Now, I do not accept that view of the case. I do not accept the view that the government were justified in what they did; but I maintain that when the United States hold this language, either our government must contend that what they did in September was unconstitutional, or they ought to have done the same with regard to the Alabama, and are liable. Now, I have only a few words more to say with regard to the course which was taken after the seizure, and again I will not say a word as to the merits of the case, of which I know nothing. What was the course the government took? On the 9th of October they seized these rams. The house are tolerably aware that the next step to be taken is one almost of form—at all events, a very few days suffices if they have, as the government say they had at the time of the seizure, a full knowledge of the case—the next step is to file an information in the exchequer, but I am sorry to say that the law of the country is such, because it was a law made to deal with seizures of bales of tobacco and things of little value, that the Crown cannot be actually driven to take a step in the Court of Exchequer for twelve months. In a case of this sort, however, where the property was of the value of nearly a quarter of a million of money—something like that amount has, I am informed, been expended on these ships—surely it was the duty of the government, when they did seize the ships, to use promptitude and dispatch to bring the case to trial. Well, now, will the House believe it that from the 9th of October until the 8th of February, which is exactly four months, not a single step was taken, no information was filed in the exchequer; and I do not think I am going too far when I say that if this House had not assembled a very few days before that time the information would not have been filed to this day? But that is not all. What was done with the ships in the mean time? We saw from the ordinary sources of information that they were taken out of the dock and laid in the Mersey under the charge of the government. Now, if a quarter of a million of money has been expended on these ships, I ask the House to consider what the loss per month must be to the persons who have laid out that sum. I do not suppose that it is an inordinate estimate to treat money in commerce as worth ten per cent., and at that rate you will get a loss of something like two thousand pounds a month, in addition to the inconvenience, which cannot be exaggerated in mercantile affairs, of what is called "lying out of the money." I suppose I am not going too far in saying that if any but a large and well-established house with great resources had been subjected to an occurrence of this kind, it must have occasioned its ruin. But is that all? We have had another confession from the government to-night. While the ships are under detention, be it observed, after the government have put their embargo upon them, when they will not let them go out for a trial trip, when they have announced that they are getting up evidence to make a case for the seizure and forfeit of the ships if they can, they send down an officer of the admiralty to deal with the owners for the sale of their ships. I was quite amused at the manner in which the attorney general dealt with this. He said, "Well, it was a very kind thing, a very humane thing. The government did not wish to push the owners to extremity. They thought there might be difficulties, and it would be as well if they paid the money to the owners for the ships." I want the attorney general to tell me what does he think of dealing with a man around whose neck the government has got the fangs and talons of the revenue officers? The honorable and learned gentleman is accustomed to deal with what are called questions of equity in contracts and bargains of this kind. Is it his idea that it is a fair thing for a government to use, not a process of law, for there was no process of law used nor that could be used, but to use the strong, violent, and unconstitutional hand of the executive to detain these ships, to tell those who had built them that the government were getting up a case to confiscate them, and then while that is being done to send down an agent of the admiralty to treat? "To treat?" Is it not a mockery? Is not that word a mockery? Was that fair dealing? Was that a seller and buyer at arms'-length and on an even footing? The government with its

hands upon the ships, the government asserting that the day was coming when the ships would be forfeited, and then going and saying to the builder, "Come, now, sell us these ships; let us buy them of you." But what is the climax? The climax is this: The month of February comes at last. Parliament meets, and the information can no longer be delayed. It must be filed, and then we have the last letter from the treasury to Messrs. Laird, which I hope the house will have printed for its perusal in the papers about to be produced. It begins with another piece of mockery, for it is headed "Immediate." After four months the treasury woke up and said:

["Immediate.]"

"TREASURY CHAMBERS, February 8, 1864.

"GENTLEMEN: In reply to your letter of the 3d instant, I am commanded by the lords commissioners of her Majesty's treasury to acquaint you that they are informed that an information in the case of the iron-clad vessels built by you, and now under seizure by her Majesty's government, will be filed in a few days, and that it may be necessary to send a commission abroad for the purpose of collecting evidence.

"GEORGE A. HAMILTON.

"Messrs. LAIRD BROTHERS."

Collecting evidence! The seizure, according to the government, could only be made upon evidence, and four months after the seizure the government are going to collect evidence abroad. Sir, we have not got many papers from the government this year, but I trust the House will insist upon the production of these.

The SOLICITOR GENERAL. Sir, I am happy to agree with my honorable and learned friend in one or two of the propositions which he laid down. He stated that the latter class of papers, the production of which is required, would not affect the trial of this case, and would not, indeed, be evidence in it. I agree with him. He also said that it was proper that the House should know the tone of the correspondence between the American government and our own. I agree with him. The House has a right to know that, and the papers will be produced. I therefore cannot help thinking that my learned friend might have saved a great portion of his argument which referred to the production of those papers, knowing very well before he got up that it was the intention of the government to produce them. He went on to give the House his opinion, as counsel for Mr. Laird; [Sir Hugh Cairns dissented.] Why, we all know that.

SIR HUGH CAIRNS. I beg to say that my learned friend knows nothing at all on the subject.

The SOLICITOR GENERAL. He was in the case at all events.

SIR HUGH CAIRNS. Never.

The SOLICITOR GENERAL. My learned friend, I am sure will forgive me if I was under a misapprehension. But my honorable and learned friend appeared in the last case of the *Alexandra*, and I certainly supposed, from the tenor of his address, a good part of which appeared to me in some measure calculated for a jury, that it was a rehearsal of the speech which he intended hereafter to deliver in the case. He gave his opinion, whatever it may be worth, and I do not at all wish to detract from the value of that opinion, that the production of the first class of documents, namely, the correspondence between the government and Messrs. Laird, would not in any degree affect the trial. The House will do my honorable and learned friend, the attorney general, upon whom the responsibility of this prosecution rests, and myself the justice to suppose that it is not one which we should have undertaken lightly or hastily. The attorney general is of opinion that the production of this correspondence would tend to prejudice the case. The distinction between the two kinds of correspondence is, that one is admissible as evidence in a court of justice, and the other is not. Now, we all know that the production of only one portion of a case may lead to an utterly wrong and unfounded conclusion, and that if we desire to form an opinion according to the evidence we ought to have the whole of that evidence before us. If the correspondence, written of course under advice by Mr. Laird, and the answers of the Crown be produced, without any explanation of the circumstances under which those letters were written, or the information obtained which induced us to write in those terms, it would be impossible for any one reading the correspondence to come to a right conclusion. If the House should think that we have improperly instituted this prosecution, and that her Majesty's government ought not to be intrusted with the powers they possess, it is proper for the House to say so. But I ask the House, if we are permitted to conduct this prosecution, to allow us to conduct it in the same way as all other government prosecutions are conducted. I never remember hearing of a case, and I do not believe there is an instance, in which a government conducting a prosecution has been called on to produce to the House of Commons before the trial a correspondence which is to form a portion of the evidence for the prosecution. As my honorable and learned friend expressed a desire not to prejudice the trial, or at all to

discuss the merits of the case on this occasion, I might have been satisfied with that answer, which is all that applies to the particular motion before the House; but the debate has traveled much further afield. The noble lord, the member for Stamford, (Lord Robert Cecil,) and other members of this House, have accused the government of pusillanimity, of acting under the dictation of the American government, and of sacrificing the honor of this country. It appears to me that nothing more vitally concerns the honor of this country than the strict and scrupulous observance, now that we are neutrals, of those rules which we laid down when we were belligerents. And if there be any rule of international law on which we have insisted more strongly than another, it is that neutrals should not be permitted to supply ships of war to belligerents. Allow me to call attention to the position we have taken on this subject; for I cannot conceive anything more disgraceful or more calculated to lower this country in the eyes of the world than the reproach, assuming it to be well founded, "Your rules of international law are elastic, contracting or expanding according to your temporal interests; you lay down a law as belligerents which you will not as neutrals submit to." As long ago as 1793 we emphatically insisted that the American government should not supply France, with whom we were then engaged in hostilities, with vessels of war. We required them to detain those vessels, and Washington did detain them, before any foreign enlistment act was passed. Washington not only detained the vessels at our instance, but he proposed and carried in Congress the American foreign enlistment act, as his enemies then said, at our dictation. Precisely the same attacks which are now directed against her Majesty's government in this House were then directed against Washington in Congress. There were members of Congress who said that he was truckling to England, and allowing the English ambassador to dictate to him; they lamented the humiliation of their country, and declared that the stars and stripes had been dragged in the dust. But that great man despised the imputation of cowardice; he was strong enough not to fear to be thought afraid, and in spite of clamor—for there will always be violent and excitable men in all popular assemblies—Washington pursued the course which he knew to be just and at the same time best calculated for the interest and welfare of his own country. He passed the foreign enlistment act, and a treaty was subsequently entered into stipulating, among other things, for the restoration of prizes captured by vessels that were fitted out in American ports. I will not say whether we have any grievances against the federals or not; no doubt irritating language has been used, no doubt the press in America at times has been very offensive, and objectionable expressions have been used at times by public men. But I wish to impress upon the House that as far as the enforcement of their foreign enlistment act is concerned, we have absolutely no grievance against them. They have again and again restored prizes captured in violation of that act. As recently as the Russian war, in a case where we complained that a vessel called the *Maury*, was fitted out in violation of the foreign enlistment act, they immediately detained that vessel, her clearance was stopped, and an inquiry was subsequently directed—precisely the same course as that pursued by her Majesty's government in this case—and that inquiry, conducted entirely to our satisfaction, ended in our expressing a belief that there were no real grounds for the suspicion entertained. In the interests of peace and amity between the two countries, therefore, I wish the House to understand that we have no grievance against them with regard to the foreign enlistment act, and that it deeply concerns our honor to enforce the foreign enlistment act. But can we doubt that it also concerns our interests? I do not desire to reflect on any gentleman entertaining confederate sympathies. I can quite enter into those sympathies. It is in keeping with the generosity of English character that we should forget that the southern party were at one time most bitter in their hostility to this country; that we should even lay aside for a time our abhorrence of slavery, and view the confederates only as a brave people maintaining an unequal struggle for their independence. Our sympathies are always on the side of the weak against the strong—on the side of those who are struggling for independence, against those who are struggling for conquest. But I think we should be doing very wrong if we allowed our sympathies to blind us to the interests of our own country. Why do the federals insist that neutral nations shall not be permitted to supply the confederates with vessels of war? Why, because they are the stronger maritime power. And why would it be for our interest to insist upon the same rule against all the world? Because we are the strongest maritime power. And are we now to promulgate the opposite doctrine—the doctrine that a weak power is to be put on a footing of equality with us by using the ports of neutral states for the purpose of fitting out vessels of war? That would be a doctrine hailed with delight by the enemies of this country all over the world, because it would go to the very foundations of our maritime supremacy. Suppose, unhappily, we were at war with the United States—a consummation, I suppose, which no man desires, although speeches in this House sometimes seem to have that tendency—and we had blockaded all their ports, should we permit steam rams to issue from the ports of France? That is a question which I desire to have answered. Would my honorable and learned friend, if he were the adviser of the government, be imposed

upon^o by representations that those vessels were intended for the Pasha of Egypt or for the Danish government? He would very properly decline to be duped by any such assertions. We have done that which we should expect others to do for us, and we have done no more. What, then, was the conduct of the government which has been made the subject of such invective by my honorable and learned friend? "Circumstances came to the knowledge of the government which excited grave suspicion as to the destination of the rams. On the Messrs. Laird volunteering to give information on the subject the government intimated their readiness to receive it. Well, information was given, but I confess it was not satisfactory to the government, and, so far from removing, it increased their suspicion. The government had the depositions of sworn witnesses which confirmed those suspicions, and they felt it to be their duty to seize or detain the ships. The honorable and learned gentleman has found fault with them because they took the milder instead of the more severe course; because, instead of actually seizing them, they give notice that they would be seized if they attempted to depart. The House will bear in mind that it was not necessary, in order to justify the seizure, that the evidence should be sufficient to satisfy a jury; it was enough that the government had a *prima facie* case, such as would induce a magistrate to remand a prisoner. The government had in their possession depositions on oath, which to a certain extent made out a case. The government determined to make inquiries whether these vessels were really being made for M. Bravay or other parties. They offered to take these persons at their word, and they said, "Will you sell these vessels?" If they were really being made for these gentlemen, if the speculation was really a commercial one, they would have been too glad to accept the offer. But the parties concerned would not sell them. Could any human being doubt that they were intended for the service of the confederates? My honorable and learned friend finds fault with the attorney general and other members of her Majesty's government for stating their belief that these vessels were intended for the Confederate States. If they had not entertained that belief, they would have done very wrong in seizing them. Of course we entertain that belief, or we should have been guilty of taking an unjust course. Has any gentleman on the other side expressed a contrary opinion during all this vituperation and all these attacks on her Majesty's government? Nobody doubts they were intended for the confederate service, and not for a French gentleman or the Pasha of Egypt. What was the Pasha of Egypt to the ship-builders, or they to the Pasha? Then, what was the use of disguising a belief that was entertained by the whole country? It would only be a mockery—it would only be trifling with the House to pretend that the government did not entertain that belief. (An honorable member: "That was not enough.") I quite agree that if it were notorious that the vessels were intended for the confederate service, but if no evidence could be procured, the ships must be acquitted. It would be better that any number of ships should leave our ports for the confederate service than the rules of law should be violated. We must prove our case, but the House will not expect me now to say what our case is. We believe the evidence we shall produce will be sufficient; if we are wrong, the jury will do justice between the Crown and the subject. My honorable and learned friend endeavored to fix the noble lord at the head of the Foreign Office on the horns of a dilemma in regard to what he said about the Alabama. But this, like many other dilemmas, has three horns, and might more correctly be called a trilemma. What the noble lord meant in saying that the case of the Alabama was a scandal was, that, in the opinion of the law officers of the Crown, the vessel ought to have been stopped before she left Liverpool. That opinion was given just before the vessel got away by stratagem. A telegram was sent down to stop the Alabama, but she had gone away that morning on a pleasure trip, and she had not returned. When a notorious criminal escapes from justice it is said, "that is a scandal to the law," and that was about all that the noble lord meant. The House will believe me when I say that, in dealing with new and difficult questions for which precedents cannot be found in the books, the attorney general and myself have followed the lights of the highest authorities in Europe and America, whose decisions on these subjects command respect. I shall not have the presumption to say that we have always been right. But this I will say, that we have endeavored to pursue the straight path, turning neither to the right hand nor to the left, showing no sympathy for the weaker nor fear for the stronger, and suffering no indignity from either. When our territorial rights were infringed, as in the case of the Chesapeake, we applied for and obtained redress. We have done the same in other cases; and in the case of the Saxon, where a murder was committed, we lost no time in demanding that the murderer should be put upon his trial. But it is only just to act toward the American government as we should ask them to act to us if our positions were reversed. We have endeavored to do as we would be done by, and I venture to say that in taking that course we have best consulted the interests and the honor of this country.

Mr. WALPOLE. Sir, if it were not for some observations made by the solicitor general, in which I cannot concur, but which upon reflection I think he will see reason to qualify, I should not venture to trespass on the attention of the House after the great and constitutional speech which we have heard from my honorable and learned friend,

(Sir Hugh Cairns.) I believe that since the days of Sir William Grant and Sir James Mackintosh a greater speech has not been made on questions of international and constitutional law. And I venture to remind my honorable and learned friend, the solicitor general, that to the points of the speech for which my honorable and learned friend below me asked for an answer no answer has been given. The solicitor general rests the whole of his argument on these two propositions—that we ought to do to America as we would have America do to us. That no one disputes. The other argument is, that we, being neutrals now, ought to act as we expected neutrals to act to us, when we were at war. In both these propositions I cordially agree, but I would ask him whether, by the doctrine he has laid down, he is asking us, as a neutral nation, to exercise merely neutral rights, or whether he has asked us to abandon neutral rights? I have observed that the fallacy which ran through the argument of my honorable and learned friend, and in some respects through that of the attorney general also, is that of confounding the obligations of our municipal law with those of international law. My learned friend, the attorney general, runs from one of these to the other, as if they were identical. Now, I take leave to say that the two things are essentially distinct. Municipal laws, unless they are embodied in conventions and agreements, give no right to foreign states to call on a government to interfere, either on the ground that there are new rights to be enforced or new duties to be preserved. But the foreign enlistment act is a municipal law which has not been embodied in any international convention, and I will undertake to say that if the arguments advanced on behalf of the Crown are pushed to their legitimate consequence, no government could ever sanction such a convention. But the rights arising out of international law are entirely different. They are as universal as the world; the same in America as in England. In dealing with other states on grounds of international law your municipal laws are not worth a rush, but you are bound to recognize the principles of international law though no municipal laws exist on the subject. That shows the utter fallacy of the arguments of my learned friends. They have confounded the duties of a neutral state with the duties of the commercial subjects of a neutral power. This distinction is most important. A neutral state cannot favor either belligerent, cannot supply them with arms, ammunition, or ships of war, or allow its citizens to be enlisted in their army or navy. But it has always been a principle affirmed by the greatest jurists, and recognized by America as well as by this country, that the commercial subjects of a neutral power have no rights taken away from them in regard to carrying on any lawful trade whatever, in time of war as in time of peace, subject only to this one qualification, namely, that if they deal with articles contraband of war, they must take the consequences of the risk they run. In carrying on that trade, they are perfectly at liberty to supply belligerents with arms, ammunition, ships, or other articles contraband of war; they have a right to carry on their customary trade; but in carrying on this trade they are subject to this penalty—that they know their property may be confiscated if they violate the law of nations. My honorable and learned friend would do well to bear in mind the distinction. But, acting on the notion upon which he has grounded the whole of his arguments, he says, "Look what America has done in your case. Did America allow ships of war to go out of her ports when you were at war?" And, by a slip of the tongue, I hope it was, he seemed to say that it was absolutely contrary to the law of nations to furnish any country with a ship of war. Where did my honorable and learned friend learn that doctrine? What country has ever laid it down? Has America? Go and consult Judge Story. He has told you that ammunition, and ships, and arms, and all kinds of contraband of war may be furnished by a neutral to a belligerent, but at the risk and peril of those who furnish them. My honorable and learned friend quotes the case of 1793, and also the case of the Maury at the time of the Russian war. He quotes those cases, but, pardon me, he rather misquotes them. Why, in 1793 it was the case of ships built, fitted out and armed, and ready to go out to sea as privateers. These were the ships that Washington stopped. What was the case of the Maury? That ship had her guns in her, and she was only stopped when she was so fitted out, contrary to their own foreign enlistment act as much as it would be contrary to ours. The only authorities, therefore, which my honorable and learned friend quoted were not the least in his favor. But I must say, if you are to run your municipal laws into your international laws, and mix them up so that you cannot sever them, as the learned attorney has unfortunately done, what will be the consequence? I have always understood that when a municipal law which is of a highly penal character is passed, the Crown can only enforce it by strictly adhering to its provisions. But my honorable and learned friend, deviating from the only ground he could have taken up, says that the Crown on its own responsibility and exercising its prerogative will import into this statutory obligation—for it is only a statutory obligation—a prerogative greater than was ever exercised by any arbitrary sovereign. Your laws, if they are to be maintained, the peace of the world, if it is to be preserved, can only be maintained and preserved by adhering strictly, regularly, and consistently to those great principles of international law which are not the laws of Europe only, but of America also. And the greatest principle of all is this, that

when other countries chance to go to war, neutrals are deprived of no rights which they before possessed in the ordinary course of their business. Well, my honorable and learned friend, the solicitor general, in attempting to answer the only other portion of the speech of my honorable and learned friend, the member for Belfast, tries to explain away the dilemma in which my honorable and learned friend had placed Earl Russell. I thought his explanation anything but satisfactory. But I was glad it was attempted, because it reminded me of the line of policy which Earl Russell had taken with regard to the Alabama, and which is totally different from that which the law officers of the Crown are now pursuing. The honorable and learned member for Belfast reminded the House that Earl Russell said the case of the Alabama was "a scandal." But such was not Earl Russell's opinion a year ago. Nay, more, I will say that as recently as last October Earl Russell's opinion was much sounder, because it was more just, because, in fact, it was in exact conformity with the great principles which I have endeavored to sustain. If the American government has a right to call upon us to stop ships which it cannot prove to be built, and equipped, and armed, and fitted out in violation of the foreign enlistment act, upon what do they ground that right? I will show you upon what Mr. Adams grounds it, and I will give you the answer of Earl Russell. Mr. Adams, writing to Earl Russell on the 23d of October, 1863, says:

"The United States are compelled to assume that they gave due and sufficient previous notice to her Majesty's government that this criminal enterprise was begun, and in regular process of execution, through the agencies herein described, in one of her Majesty's ports. They cannot resist the conclusion that the government was then bound by treaty obligations and by the law of nations to prevent the execution of it. [What treaty obligations? I know of none.] Had it acted with the promptness and energy required by the emergency, they cannot but feel assured the whole scheme must have been frustrated. The United States are ready to admit that it did act so far as to acknowledge the propriety of detaining this vessel for the reasons assigned, but they are constrained to object that valuable time was lost in delays, and that the effort when attempted was too soon abandoned. They cannot consider the justice of their claim for reparation liable to be affected by any circumstances connected with those mere forms of proceeding on the part of Great Britain which are exclusively within her own control."—*Correspondence*, No. 1, (1864,) p. 26.

Now the gravity of that sentence must not be forgotten. The claim is made upon two grounds—treaties, and the law of nations. But there are no treaties, and the law of nations is as I have stated. But what is the meaning of the claim for all the injuries done by the Alabama? Are the government going to admit that such a claim is to be entertained for a single moment? What does Earl Russell say? And here I find the sound views upon which the government ought to act. They will be found in page 42 of the papers. Earl Russell, writing on the 26th of October, 1863, says:

"With this declaration her Majesty's government may well be content to await the time when a calm and candid examination of the facts and principles involved in the case of the Alabama may, in the opinion of the government of the United States, usefully be undertaken. In the meantime I must request you to believe that the principle contended for by her Majesty's government is not that of commissioning, equipping, and manning vessels in our ports to cruise against either of the belligerent parties—a principle which was so justly and unequivocally condemned by the President of the United States in 1793, as recorded by Mr. Jefferson in his letter to Mr. Hammond of the 13th of May of that year. But the British government must decline to be responsible for the acts of parties who fit out a seeming merchant ship, send her to a port or to waters far from the jurisdiction of British courts, and there commission, equip, and man her as a vessel of war. Her Majesty's government fear that if an admitted principle were thus made elastic to suit a particular case, the trade of ship-building, in which our people excel, and which is to great numbers of them a source of honest livelihood, would be seriously embarrassed and impeded. I may add that it appears strange that, notwithstanding the large and powerful naval force possessed by the government of the United States, no efficient measures have been taken by that government to capture the Alabama."—*Correspondence*, No. 1, (1864,) p. 42.

Now, with great deference to the law officers of the Crown, I prefer the international and constitutional view taken by Earl Russell to that which is taken by my honorable and learned friends. That view, I am persuaded, is sound; and when I hear my honorable and learned friend, the member for Belfast, go over step by step the course which the government have taken—when I find they were actually, as it were, inviting evidence against the builders of those ships by communications, the answers to which might be turned against them—when I see they were acting without any authority in detaining the ships, the act of Parliament giving them no such power—when I hear, and it was not contradicted and cannot be contradicted, that the seizure was made on the 9th of October, I think, and that no proceedings whatever were taken until the 6th or the 8th of February, I must put it to the merchants of this House and beg them to consider, in behalf of their great mercantile interests, whether they are to be—I was going to say—trifled with by arguments like those of the learned solicitor general?

Ship-builders are no more acting contrary to the law of nations in building ships for sale than merchants are in sending goods to break the blockade or in manufacturing arms to be used by the federals. When I see all these things, and find the other side of the House echoing to the roof the observation of the solicitor general that the merchants of this country would do well not to violate the law of nations and the obligations imposed upon them by the proclamation of their Queen, my answer, first, is that they do it at their peril, if they send out articles contraband of war; and secondly, that they do no more wrong, they act no more contrary to the royal proclamation in building ships to sell them to the confederates than they do in sending out arms or ammunition to be sold to the federals or swift steaming vessels to break the blockade. Let it not be supposed that I wish to show my sympathies to the one side rather than the other in that tremendous conflict which is now raging beyond the Atlantic. I have never spoken on that subject in this House. If I were to give expression to my sympathies, it would be seen that they are not those which the solicitor general imagines exist on these benches. They would be partly in favor of that brave people who are endeavoring to assert their independence against the oppression to which they think they are exposed; but my sympathies, as well as those of the country, were, I believe, in the commencement of this fearful struggle, so far enlisted with the North as to lead us to hope that the Union of all the States might still be preserved. It is not, therefore, because I sympathize with one side rather than the other, but for the purpose of maintaining intact the great principles of international law that I have deemed it right to address these few observations to the house.

Mr. T. BARING. Sir, I had not intended to trouble the House with a single word on this occasion; but as my right honorable friend who has just spoken has appealed to the merchants of his country in support of the sentiments to which he, as well as the honorable and learned member for Belfast, has given expression, I, as an humble member of the mercantile community, and not assuming to myself in any way authority to represent it here, cannot help protesting against the doctrines which he has laid down. I for one cannot think that, by sanctioning measures which would lead to privateers and war vessels being fitted out at neutral ports to take part in the contest now raging across the Atlantic, we should benefit the commercial community. What community, let me ask, would suffer more than the mercantile classes of this country, if that system were generally supported and that principle adopted? What would take place in the event of a war breaking out between us and another nation, if it were allowed to a neutral country to arm vessels as pirates to destroy our commerce? We are not uninterested in this matter. As merchants we are interested in maintaining that principle which we supported and propounded ourselves when we were engaged in war. We are interested in the principle adopted by Jefferson at our recommendation, and acted on by ourselves so lately as during the Crimean war, and which, if it be broken through now, may be acted upon to our injury hereafter. My right honorable friend says that neutrals are authorized to trade. Yes; but there is a law which says we are not to equip vessels for warlike purposes. And does my right honorable friend, I would ask, mean to contend that these vessels, the case of which we are discussing, armed as they were with rams, are merely innocent commercial ships, intended to be used simply for commercial purposes, and which would be misused if adapted to the purposes of war? Will he not allow that the mode in which they were constructed shows the object for which they were destined? My right honorable friend says that the solicitor general did not answer the question put by the honorable and learned member for Belfast; but there was another question which he himself did not answer. Does he believe that these vessels were equipped for warlike purposes? That is a question which, I am sure, he would not undertake to answer in the negative. But be that as it may, I, as an humble member of the commercial community, speaking in support of my individual interests as a merchant, rejoice to say that those interests are identified with the blessings of peace and the maintenance of amity. I may add, that on the continuance of those blessings rests not only the progress of civilization, but the greatness of this country; and when I hear honorable gentlemen on this side of the House taunting the government, as it were, with not precipitating us into a war, I have, I confess, no sympathy with them. In speaking thus I am, I allow, advocating my own interests; but in doing so I feel I am advocating also the interests of my country and of humanity. This I would say in conclusion, that if the speeches of my right honorable friend and the honorable and learned member for Belfast are to be taken as furnishing the grounds on which we are to divide to-night, they seem to me to have arrived, by simply moving for these papers, at a most lame and impotent conclusion. Why do not they at once move a vote of censure on the government, or on the law officers of the Crown, for the course which they have pursued? For my own part, I offer to the noble lord, the foreign secretary, and to those gentlemen by whom he is advised in those matters, although I think they are open to grave censure for not having prevented the departure of the Alabama, my thanks for their conduct on this occasion, deeming it, as I do, to be calculated to promote the welfare of the state.

Mr. SEYMOUR FITZGERALD. I might have been well content to have left the argument

on this question where it was left by my honorable and learned friend, the member for Belfast, and my right honorable friend, the member for Cambridge University; but, I must say, that, in listening to the speech just addressed to the house by the honorable member for Huntingdon, there was only one sentence which gave me satisfaction and pleasure, namely, that he did not assume to represent the mercantile community of England, but that he merely spoke in his own name. We all know the high and distinguished position which that honorable gentleman holds among the merchant princes of England; but I am glad to hear from him that the words he uttered expressed his own opinions alone. The honorable gentleman has tendered to the law officers of the Crown his thanks for the course they have taken. I must confess that I do not agree in those thanks. The honorable member for Bradford (Mr. W. E. Forster) admitted that a more important question had never been brought before the House. I quite agree with him, though on a different ground from that on which he put it. He said it was important, because it concerned the commerce, the trade, and the possible position of the country in the event of another war. These are grave and important considerations; but I hold further, that this is a most important question, on the ground that this is the first time, for many a year, that a minister has stood up in this House to justify, in the face of the House of Commons, a deliberate breach of the law. The honorable gentleman opposite has referred a good deal to the word "responsibility." That is an elastic word, and is one capable of wide application; and, if the executive can act thus, if the law officers of the Crown can arrest ships, why may they not arrest men also? To what extent may not the doctrine of the solicitor general be extended? Is that a doctrine likely to secure peace, that the executive should thus break the law and seek to justify themselves to the House of Commons? But there is one point which I wish to put to the attorney general. He has said that these ships were detained upon grave suspicions of the intentions of the builders, and that they were not seized till sufficient evidence was obtained of the use for which they were designed. I wish to ask him what the result would have been if it had been shown that the intention of the builders was lawful and innocent? Would not the right honorable gentleman then have to admit that the law had been deliberately broken, and that the power of the executive had been brought to bear against persons who were blameless? I think a great advantage has been obtained by the discussion of to-night, and I am glad to see that it has been from this side of the House that the principle has been advocated, that nothing will justify, on the part of the executive, a deliberate breach of the law on the grounds which the government have taken to-night, that the end will sanctify the means.

SIR GEORGE GREY said he wished it to be clearly understood, before the House proceeded to a division, that the papers asked for in the latter part of the motion the government were ready to grant; and that the negative which the government gave to the motion applied only to the former part, relating to the correspondence between the various departments of government and Messrs. Laird.

Question put: "That an humble address be presented to her Majesty, praying that she will be graciously pleased to give directions that there be laid before this house copies of all correspondence between the various departments of her Majesty's government, or officers in her Majesty's service, and Messrs. Laird Brothers, relating to the two iron-clad vessels, the *El Tousson* and *El Monassia*, building by that firm and seized by order of her Majesty's government; and of any papers or correspondence that have passed between her Majesty's government and the government of the United States, or their representative, Mr. Adams, relating to the said vessels."

The house divided: Ayes, 153; noes, 178; majority, 25.

APPENDIX No. XVII.

DEBATES IN THE HOUSE OF LORDS OF APRIL 5, 1864, AND JUNE 9, 1864, RELATIVE TO FEDERAL ENLIST- MENT OF BRITISH SUBJECTS.*

[From Hansard's Parliamentary Debates, vol. 174, pp. 448-450.]

HOUSE OF LORDS, *April 5, 1864.*

UNITED STATES FOREIGN ENLISTMENT ACT.—THE KEARSARGE QUESTION.

THE EARL OF DONOUGHMORE said that at the last Cork assizes certain persons pleaded guilty to an indictment charging them with having violated the foreign enlistment act, and they were released upon their own recognizances. The offense was having enlisted subjects of her Majesty on board the United States ship of war Kearsarge. The captain of that vessel stated that the men came on board without his knowledge, and he was not aware of their being on board until he had got to sea, and that when he went into Brest he put them on shore, but as they were without the means of subsistence he took them on board again and conveyed them back to Cork. When this subject was last alluded to, the noble earl opposite (Earl Russell) made what certainly appeared to be a very extraordinary statement, for he said that he could not see what else the captain could have done. That was a very remarkable statement, because it appeared, from the evidence that had been taken, that the men were actually put into the uniform of the United States navy by order of the officers of the ship. Now, what he (the Earl of Donoughmore) wished to know was whether the noble earl had required any explanation from the American minister with regard to the circumstance.

EARL RUSSEL said that at an early period of the discussion of this matter he had complained to the United States minister of the conduct of the officers on board the Kearsarge. After what had passed in that House and after what occurred in the court of justice in Ireland, he had again called the attention of the United States minister to the subject, and had asked him to refer to the newspapers and to the opinion given by Mr. Justice Keogh. The United States minister informed him that in the month of November last he had received instructions from his government that if the consul had been at all instrumental in violating the foreign enlistment act he should be at once dismissed, and that, with regard to the officer in command of the ship, if the minister found that he was to blame, he was to be reported to the government, in order that the proper notice might be taken. Mr. Adams did not act upon those instructions, because he did not consider that there was any blame due either to the consul or the officer in command of the ship in enlisting these persons into the service of the United States. The correspondence was not yet concluded, but when further explanations had been given the dispatches would be laid on the table.

THE EARL OF DERBY said that unless Mr. Adams denied the statement that these men were examined by the surgeon and attested, that their names were entered on the books of the ship, and that they were clothed in the uniform of the United States Navy, it was impossible that the officers of the ship should not be cognizant of the men being on board.

THE MARQUESS OF CLANRICARDE said there could be no difficulty in ascertaining the truth, if it was desired that the truth should be elicited. He believed the Kearsarge was now repairing at one of our ports. If so, why should not the officers at once come to London and make such a statement of the real facts as the American minister would be prepared to vouch for? It was rather too much to extend to them the hospitality of this country in the face of such statements as were made on the trial at Cork. Either these gentlemen had stated the truth or not. If they had told the truth, let them come forward and verify the facts. No one who knew Mr. Adams would dispute whatever he was prepared to vouch for from his own personal knowledge.

* Transmitted with the following dispatches: Mr. Adams to Mr. Seward, No. 644, April 8, 1864, see vol. II, p. 441; Mr. Adams to Mr. Seward, No. 718, June 16, 1864, see vol. II, p. 454.

[From Hansard's Parliamentary Debates, vol. 175, pp. 1430-1454.]

HOUSE OF LORDS, June 9, 1864.

ENLISTMENT OF IRISH IMMIGRANTS.—ADDRESS FOR PAPERS.

THE MARQUESS OF CLANRICARDE, in rising to move an humble address to her Majesty for papers relative to the enlistment of Irish immigrants and others, her Majesty's subjects in the United States Army, said that their lordships might think him somewhat pertinacious in entering again into this subject; but he could not help feeling that her Majesty's government had been remiss in the matter. The subject was one of considerable importance. It was of the utmost interest to the people of this country, from its connection with the prerogatives of the Crown, and the welfare of a large portion of her Majesty's subjects; and it was also a matter in reference to which we had incurred a great moral responsibility, inasmuch as there was reason to believe that, if proper measures had been taken to prevent it long ago, the civil war in America would have ended before now; and if the recruiting of British subjects were now put a stop to, he believed the war would be brought to a comparatively early termination. If the cases of this description which had been brought before Parliament were isolated and exceptional—if they had arisen only from overzeal or indiscretion or avarice on the part of American citizens—he should not have been apt to notice them. But the federal recruiting in the British dominions had attained large dimensions. No man could doubt that for two years there had existed a deliberate intention on the part of the federal government to fill its armies from the inhabitants of foreign countries, and especially with subjects of the Queen. The sanguinary war which had raged had rendered it impossible for the federal government to recruit its armies from the population of the federal States, and it now deliberately sought to recruit its armies from abroad. He was not one of those who were disposed to lay very much stress upon the foreign enlistment act, because he believed that it was seldom found to be very efficient in its working, either with regard to the belligerents, or with regard to our own subjects. The results had not been creditable either to our legislation, our jurisprudence, our administration, or our government; and especially the attempts which had been made by the government of this country to preserve impartiality in the contest on the American continent had not procured for us much credit, nor tended to increase the respect with which we were regarded. It was a fact, not at all unknown in the metropolis or in the business world, that one of the belligerent powers had been plentifully supplied with arms and munitions of war by this country from the commencement of the contest; and this he was told was contrary neither to the foreign enlistment act nor to the Queen's proclamation of neutrality; and yet, as soon as it was proposed to supply the other belligerent power with ships, a course which would practically have placed the resources of this country impartially within the reach of both parties, the government had found itself compelled to take action, and to assert its entire neutrality. He maintained that at no former period of our history had foreign enlistment so extensively prevailed. It was a fact perfectly notorious that there had been approved agents of the federal government established not only in Ireland but also in England, for the purpose of enlisting recruits. He had received communications upon the subject from the midland counties informing him that such was the case, and he had learnt that efforts to obtain recruits had even been made in Lincolnshire, where it would have been thought there was little likelihood of success. The federal government itself had made no secret of its actions. The Secretary of State presented to Congress a bill, strengthened by a message from the President, actually providing for such enlistments, and the measure was referred to the consideration of a committee. The bill proposed to establish a foreign recruiting department, the headquarters of which were to be at New York, and that its recruiting agents should be scattered through foreign countries. He believed that such a plan had never been suggested anywhere but in America. Was it possible to doubt that the chief object of such a measure was to facilitate the enlistment of recruits from this country and other portions of her Majesty's dominions? The law was not passed, and it failed partly because it was feared that so open a manifestation of the intentions of the federalists might excite the opposition of our government. The bill was what was called, in the language of the country, "tabled." We had not only this to complain of, but we had also submitted to what was contrary to every international law. He had by him a Liverpool paper in which it was stated that a regiment of fifteen hundred Germans had been levied in Germany, and that they were to sail from Liverpool as ships could be provided for the purpose. The newspaper recorded the departure of one hundred and thirty Germans in the same manner as if the event were the embarkation of a regiment of the guards. That was exactly one of those cases which the foreign enlistment act had been intended to prevent. Of course it was not openly stated that men were enlisted for the army. It was pretended that the demand for soldiers caused by the severity of the conflict had created such a displacement of industrial

laborers that many branches of the industry of the country were at a stand still on account of the impossibility of procuring workmen. No man, however, who examined the provisions of the bill to which he had referred would credit such statements for a moment. The provisions of the bill, according to the account which he had read of it, proposed to advance the passage and other sums of money to the emigrants, which were afterward to be deducted from their wages. It was obviously absurd to think that the federal government would appoint collectors to go round all over the country and collect weekly or monthly payments, as the case might be. The money could only be repaid by deductions from wages if the men were engaged in service under the government, and it was notorious that that service was in the army. They knew that for the last two years proclamations had been issued for recruits, that the President of the federal States had called upon the different States to supply their quota, and that some of those proclamations had scarcely produced more effect than so much waste paper. There were only two States where the quota of soldiers was supplied proportionate to the population; the quotas for the other States were in the aggregate three hundred and twenty-two thousand men short—a number equalling our whole army, including the army in India. To illustrate the difficulty the American government were in to obtain soldiers, he might refer to a statement which he had seen in a newspaper of an answer which President Lincoln had given to a deputation from certain States on the subject of the enlistment of colored men, who were paid the same as white men. The President's answer was that by making the pay the same he expected to raise one hundred and thirty-six thousand men. In even the more wealthy States the enlistments were not at all successful. It was well known how that the need of men had driven the United States government to employ negro soldiers, and President Lincoln had recently stated that he expected the negro regiments would provide him with one hundred and thirty thousand men. It was truly horrible to think that such vast numbers of men should be wanted for the mere purpose of slaughter. In the space of very few weeks no less than forty thousand men had been lost to one army alone, and from calculations based upon hospital returns there was no reason to think that that number was exaggerated. Such a state of things was not creditable to the civilized world, and, at least, we ought to take steps to prevent our fellow-subjects from becoming victims in the dreadful conflict now raging in America. When the pretense of inducing men to go over to America to work upon canals and railways was put forth, no one could be deluded by it in that House. They had heard of the case which occurred not long ago in Ireland, where a number of operatives were induced by a federal agent to accompany him to the United States. Upon arriving in Boston the men were lodged in a sort of barn, where they were kept without food all day. In the evening strong drink was freely supplied, and some of the unfortunate men became so stupefied that they did not recover their senses for two days. After the men had drank deeply Mr. Kidder, the person by whom they were engaged, visited them, accompanied by government and police officers, and informing them that he had been disappointed in the work for which he had engaged them, recommended that they should join the United States Army, at the same time tendering the bounty, specially inviting them to join a particular regiment, which he said was wholly composed of Irishmen. Some were induced to accept the bounty, but the others were turned out next day, and were indebted for food to the charity of their fellow-countrymen in Boston. That was the way in which subjects of this country had been treated in a town where we had a consul. He wanted to know what had been done for those men, and what reparation had been sought for them, and whether any precautions had been taken to prevent the recurrence of such transactions in future. That such practices as those he had referred to were not uncommon, they knew upon the authority of a federal officer, General Wisden, who remonstrated against the sort of men who were sent to him, of their being mostly foreigners, and of the manner in which they were enlisted, stating that frequently they were sent off to the depot while drugged, and refused to do duty upon recovery, alleging that they had not been fairly enlisted. In these cases the men were shot at once without trial. Were such proceedings to be allowed to continue? It was not only in this country and in Ireland that the practices he complained of had been carried on, but he had seen letters from Canada which spoke of similar doings there, and in one case mention was made of the desertion of several non-commissioned officers and men from a regiment serving there, tempted to do so by the inducement being held out to them of commissions in the federal army. He would not mention the particular regiment referred to, because he trusted that the statement might not be correct. He might be told that all these were general statements; but even if so, they were statements known to all the world, and could not be unknown to the authorities here. He wanted to know whether we were to continue upon terms of amity and alliance with a people who treated us in this manner, and who received our remonstrances with contempt. It was to be regretted that the case of the Kearsarge should have been suffered to pass almost without notice. A more flagrant case than that of the officers of this vessel in Cork Harbor had never occurred. This, however, was a question between nation and nation. How was a similar question treated by the govern-

ment of the United States in 1812? Mr. Madison, in his declaration of war against this country, went far beyond the order in council, which was the immediate cause, and complained generally of the practice of impressing seamen found on board American ships. Mr. Madison did not complain that John Smith or Tom Jones was taken out of a particular ship, nor did he draw an indictment as particular as an Old Bailey lawyer would make it, but he complained of the general practice of this country, and said the United States would not suffer it longer. He did not wish to go to war—he rather desired to put a stop to war. When this country had been treated with insult and indignity; when our fellow-countrymen had suffered great injuries; he wished, not for war, but for something like vigorous remonstrance, and an assurance that the objectionable practices should not be continued. If he were asked whether if remonstrance failed he was prepared to go to war, he would ask, in reply, for what were we ever to go to war if not for insults offered to our sovereignty and injuries done to our fellow-subjects, for which no redress had been afforded? Why did we pay £30,000,000 a year for our army and navy if these forces were not to be employed in maintaining the honor of the country and affording protection to our fellow-countrymen? We were doing neither. We had supplied the northern States with arms and munitions of war to an enormous extent, and it might be difficult to prevent that. But we had also supplied during the last year or so many thousands of men, and of the tens of thousands who had been massacred in this awful conflict there could be no doubt that a large proportion of the victims had been born subjects of the Queen. He contended that such a state of things ought to be put a stop to by her Majesty's government. We had no business to be in amity or in diplomatic relations with a country which paid so little regard to the rights of our fellow-subjects as the federal States of America had shown in this matter. He could not help thinking that a great deal of blame must be laid to the charge of the nations of Europe for the continuance of this war. When two great armies were fronting each other, was not, perhaps, a time when any hopeful interference could take place, but there had been times when he thought interference might usefully and effectively have taken place; while, on the one hand, we took a tone as regarded our fellow-subjects to show that we would not permit the repetition of such conduct as had gone on during the last year, he also hoped that within a very few weeks there might be such a state of affairs in that country when it would be perfectly proper and possible for the nations of Europe to enter upon this matter with a firm and decided tone, and that they would take those steps by which alone he believed this horrible carnage, utterly fruitless in itself, injurious, above all, to America, disgraceful to the century in which we lived, and shocking to the feelings of all mankind, would be terminated. The noble marquis concluded by moving that an humble address be presented to her Majesty for the papers, &c.

LORD BROUGHAM, in rising to second the motion, wished to make a few observations on some parts of his noble friend's statements. No one could lament more deeply than he did, not only the cruel and calamitous civil war which had been raging for the last three years in America, but the conduct of many of our countrymen in joining in this dreadful contest, more particularly those who came from that part of the country to which his noble friend belonged, and who, he lamented to say, had in great numbers entered the federal army. He highly disapproved of the conduct of the federal government, not only in the attempt, which they began but could not carry out, to establish depots for raising foreign recruits, but he disapproved as entirely of their taking men—even if they did not inveigle them by the tricks which had been described—taking them even when the men honestly entered, and entered knowing what they were doing, even though not deceived by crimps and deluded under the influence of strong liquor. The men were told they were going merely to labor in the fields; and after they were there they were told there was no work for them, and they were asked: "Will you please come into the army?" But even suppose the most fair and honest contract made between these Irishmen and the recruiting officers of the federal government, he still disapproved of the course which they had adopted. What was their complaint against us? That we were not sufficiently neutral. That we did not hold the balance even between the two parties—federals and confederates. Both parties in America, he believed, complained of us in this respect; but could there be a more open infraction of neutrality than the conduct of those who compel the poor Irish immigrants to enter their service, or who take them into their service? They were taking men in their service who were guilty of an offense punishable severely in this country. These men were criminals. The crime of which they were guilty had lately been made a misdemeanor by the foreign enlistment act; but in the reign of George II it was felony, and at one time it was a capital felony. The men were still criminals; and the federal government employed men knowing them to be criminals, and that it was only as criminals that they were entering into their service. Time was when those same Americans complained bitterly of our employing foreign troops to subdue them—to do the very same thing toward them which the federals were now doing toward the confederates, endeavoring to restore the Union—that was to conquer, or attempting to conquer, the confederates by foreign troops. In the

drafts to supply the enormous demands which this most lamentable war had made—he believed not less than 600,000 in the course of the last two years—they took not regiments or corps, but thousands of persons from Germany, and he grieved to say, hundreds at least from Ireland. The Germans formed a great part of their resources to supply the blanks which this cruel war had made. These Americans complained of our conduct in 1778; and the worst thing they considered we did, in attempting their conquest, was the employment of Hessian and other German regiments in the course of the war. The eloquence of Mr. Burke and of Lord Chatham made the walls of Parliament ring with complaints of the German mercenaries being taken into the pay of the government for the purpose of subduing America. Now, these Americans were doing the very self-same thing, not by taking corps but thousands of individuals who are foreigners into their service, and employing them against the confederates. He wished his voice, which hardly reached the limits of that room, could reach across the Atlantic, to his old friends and clients—for taking part with whom in 1812, to which his noble friend referred, he had suffered much abuse in this country, being called at one time the attorney general of Mr. Madison, at all times the tool of Mr. Jefferson, and said in every respect to have given the preponderance to America over his own country; a groundless charge, but it was made, and it showed the anxiety and warmth with which he supported the cause of America. Would that his former clients would now listen to him, imploring them for once—once and for all—to be satisfied with the glory they had gained; for they had shown the greatest courage universally, both confederates and federals had shown the greatest fortitude, the greatest courage, the most extraordinary capacity for war—he meant for war as regarded mere fighting, which no doubt a great part of war was; and they had shown that, if they were not sparing of other men's lives, neither were they sparing of their own. Let them, then, be satisfied, for the love of peace, of Christian peace, with what they had gained by that glory, and let them at the last restore peace to their country. He believed there was but one universal feeling—not only in this country but all over Europe—of reprobation of the continuance of this war, of deep lamentation for its existence, and of an anxious desire that it should at length be made to cease. His noble friend had adverted to the possibility of intervention. He had himself refused, during the last three weeks, to present petitions from various mercantile bodies to urge on the part of the government intervention in the American war. He did not feel that the time had yet arrived; but he lived in hopes that before long an occasion might arise when, in conjunction with our ally on the other side of the channel, we should interfere with effect, and when an endeavor to accommodate matters and restore peace between the two great contending parties would be attended with success.

Moved, "That an humble address be presented to her Majesty for copies of or extracts from any dispatches from her Majesty's minister at Washington relating to the proceedings or report of the select committee of the United States Congress on immigration, or to bills upon that subject brought into Congress." And also, "copies of or extracts from dispatches or reports respecting the enlistment of Irish immigrants at Boston and Portland in the month of March last, or to the enlistment of any of her Majesty's Canadian subjects in the United States Army."

EARL RUSSELL. My lords, my noble friend has moved for copies of dispatches and reports respecting the enlistment of Irish immigrants in the United States service at Boston and Portland, and, knowing perfectly well that those papers would be granted—for their production has been promised—he has thought it right to raise his complaint that remonstrances have not been made at Washington against the proceedings adopted at those two places. Now, it is no doubt more convenient to complain of your minister abroad and your foreign secretary at home before you have the papers; but it would, I think, be more candid to wait till you have the papers, and then to see whether Lord Lyons or I have so entirely neglected our duty as my noble friend presumes we have done. I can only say, for Lord Lyons, that he has continually remonstrated, not only by dispatches and notes, but as he says more frequently in interviews with Mr. Seward; and since he has been at Washington nothing has given him greater vexation and distress of mind than those proceedings at Boston. I shall say nothing about myself at this moment except that I have seconded the efforts of Lord Lyons. Well, my noble friend, after many explanations on this subject, remains in the same confusion of mind, with respect to the foreign enlistment act, that was so prevalent at the commencement of this war. He says, "You allow muskets and powder to be conveyed to the federal States, while at the same time you prohibit ships from going to the confederates." In the first place, it so happens that there is that distinction in the law. There is no law which prevents persons in this country from taking arms or powder either to the federal States or to the confederates. Such articles are liable to capture, and the vessel conveying munitions of war may also be condemned, if found attempting to break the blockade; but those who carry such munitions are not liable to any punishment in this country for so carrying. There is likewise reason as well as law for this distinction. When you send muskets or powder as articles of merchandise, they, as the American authorities have always declared, are among the productions of the industry of the

country from which they come, and those who send them do not themselves perform any act of hostility. Such munitions may, indeed, after reaching a belligerent, be then applied for purposes of hostility; but it is a very different thing if you have men either enlisted or arrayed in this country for the purpose of hostilities against any power with which her Majesty is at peace, or if you have a ship sent out from your shores for the purpose of hostilities against such a State. If the ship went, as some of the American judges have in certain cases found was the fact, merely with a crew sufficient to take the vessel into the port of a belligerent, that might be a case somewhat analogous to the carrying of cannon and muskets. But when the vessel and crew go forth already equipped from the coast of the neutral, and with a sufficient crew to commit hostilities directly they get to sea against the State in amity with her Majesty, it is evident that that is quite a different proceeding from carrying muskets over from your own coast to a belligerent's coast as merchandise. Take the case which occurred two hundred years ago when 10,000 men were sent to take part in the civil war in Portugal. If you have 10,000 men arrayed and sent from your shores to take part in a civil war, the government are properly responsible for that. But with a confusion of ideas on the part of my noble friend, which is hardly excusable —

The MARQUESS OF CLANRICARDE. There is no confusion in what I said. What I said, or intended to say, was that one of the objections to the foreign enlistment act was that it did not meet the contingency which has arisen. I found fault, not with the government, but with the act.

EARL RUSSELL. I am aware of that, but my noble friend did not appear to see the reason of the act, and a very sound and sufficient reason it is, namely, that if you send cannon or muskets they are articles of merchandise, but if you send men armed with muskets and formed into regiments to be employed against a state in amity with her Majesty you are clearly taking part in the war. It is on that principle that we have not allowed ships to go from this country armed and ready to commence hostilities, if we could prevent it. We have so acted, believing not only that it is the law, but that the law is based on a sound principle. My noble friend went on to complain of what has been done in Ireland; and certainly I am ready to complain of that as much as he is. But, when we come to investigate the circumstances, the question is whether the government or those who execute the law in Ireland are to blame for anything which has occurred there. It appears that a person named Finney, representing himself as a merchant, who had lived twelve or thirteen years in the United States, engaged in a speculation with another person named Kidder to induce men to go from Ireland to America, in order to obtain the \$600 or \$700 per head bounty money on their entering the army there. These speculators put the greater part of that money in their own pocket, and defrauded the honest, but I must say credulous, countrymen of my noble friend. My noble friend says that when these advertisements appeared, holding out the hope of high wages to these poor people by working on railways and canals in America, he is at a loss to conceive how any of them should have allowed themselves to be so duped. Well, if he is at a loss to conceive how that could be, certainly I must be much more so; but I am afraid that such credulity is characteristic of his countrymen. But how is the government to blame in the matter? If a man comes to this country and says to laboring men already earning tolerable wages: "If you will go and work in Germany or in America, or wherever it may be, I will take care that you shall get very high wages," and if people are simple enough to yield to that temptation, how can the government be blamed for their imprudence or folly? It must be a very singular government indeed which should undertake that no man shall do anything improvident or foolish. Well, about one hundred of these men went from Ireland to Boston and Portland. My noble friend has truly described the nefarious treatment they met with in those places. I cannot but think that the United States police acted a very unworthy part, as well as those who were immediately concerned in inveigling these persons. But the police and the recruiting officers declared before a committee of inquiry which the American government instituted that when the men engaged to enlist they were perfectly sober, and that, however drunk they were the evening before, they were sober at the time they enlisted. Well, Lord Lyons said, and I think very justly, that the men themselves should have been examined as to the treatment they received and the state in which they were when they enlisted. Instead of that, several of them were carried off as recruits and immediately sent to join the United States army. One of them, named Sullivan, was afterward taken to hospital; and he subsequently told his story to Lord Lyons, explaining the way he had been coerced, and how he had escaped. I have said before that I think it highly discreditable to the United States government, to their civil as well as their military authorities, that they did not immediately make an investigation into the facts stated to them by Lord Lyons; that they did not bring all these men to Washington, and, unless they were found to have enlisted in a perfectly voluntary manner, discharge them. Lord Lyons has remonstrated against the inaction of the United States government and their want of attention. But my noble friend requires more than this; he seems to think we should have intimated that if our remonstrances were neglected we would go to war. He says that if ever there was a

case for war this is that case; and he asks, "If remonstrances of this kind are not attended to, when will you go to war?" Undoubtedly, these acts of injustice are the sort of acts which are frequently calculated, unless they are redressed, to lead to war, and it is the bounden duty of the American government to attend to remonstrances so well grounded as those which we have addressed to them. The conduct of the American government in 1812 is held up by the noble marquis as an example for imitation. I cannot think that this is the case; for if the complaints of the American government had been well founded, if they had waited a few months they would have seen the effect of the eloquence of my noble and learned friend, (Lord Brougham.) But it is to be recollected that the American government at that time had to complain of what I think was a very great abuse, the arbitrary and lawless power exercised by our officers, who had seized men, and, without any proof of their being British subjects, pressed them into our navy. Americans have told me how strong was the feeling which that caused. I have been told that it frequently happened that the sons of farmers in the New England States who had gone on board merchant ships for a year or two, were seized and made to serve on board our ships of war as if they were British subjects, and no redress could be obtained. Of course, that conduct rankled in the minds of the Americans, but still some years elapsed before they proceeded so far as to make it a *casus belli* against this country. Your lordships must bear in mind, too, that if we were to resort to extremities we should have considerable difficulty in determining what course to pursue, for the Confederate States are in the constant habit of ordering conscriptions and forcing British subjects to serve under their standard. When our consuls have remonstrated, they have been told, in the first place, that the men might apply to the courts of justice, and then, when they repeated their remonstrances, the consuls themselves were sent away altogether. If, therefore, we have to complain of great injuries on the part of the federal States, we have no less reason to complain of the conduct of the Confederate States, and if war is our only remedy we must go to war with both belligerents. The noble marquis seems to have an appetite for war, and perhaps he would be better pleased to go to war with both parties than with one only. All, however, I can say at present is that our remonstrances shall be continued, and that we shall continue to warn, as we have heretofore endeavored to warn, the subjects of her Majesty in Ireland against embarking in these plans which pretend to be plans for obtaining their labor at high wages in America, but which are really intended to entrap them to serving in the armies of the federal government, and to secure the fraudulent gains which the concoctors of these schemes hope to make in the shape of bounties for enlistment. I agree with the noble and learned lord (Lord Brougham) who has just spoken that this is a most horrible war. There appears to be such hatred and animosity between great hosts of men, who were lately united under one government, that no consideration seems powerful enough to induce them to put an end to their fratricidal strife, and it is difficult to deal with them on those ordinary principles which have hitherto governed the conduct of civilized mankind. It is to be hoped that these hostilities may cease, but I am afraid it is not to be reckoned on that any interference of ours would tend to conduce to that end; because, among the other feelings of violence and animosity which prevail in America, there is a strong feeling against any of the nations of Europe, but especially any of the monarchical nations, pretending to meddle with the civil war now raging in that country. I am afraid, therefore, that we shall not be able by any of the means suggested to put an end to this war. Still, it is dreadful to think that hundreds of thousands of men are being slaughtered for the purpose of preventing the southern States from acting on those very principles of independence which in 1776 were asserted by the whole of America against this country. Only a few years ago the Americans were in the habit, on the 4th of July, of celebrating the promulgation of the declaration of independence, and some eminent friends of mine never failed to make eloquent and stirring orations on those occasions. I wish, while they kept up a useless ceremony—for the present generation of Englishmen are not responsible for the war of independence—that they had inculcated upon their own minds that they should not go to war with four millions, five millions, or six millions of their fellow-countrymen who want to put the principles of 1776 into operation as regards themselves. With respect to the motion of the noble marquis I shall produce whatever papers we have got. Those papers, I think, tell a story very discreditable to the American republic. All I can say is that we shall continue to remonstrate in the strongest terms, not to save the unfortunate men who have already enlisted, and many of whom have already fallen in the field, but with a view to prevent similar practices in future.

The MARQUESS OF CLANRICARDE said he did not want the government to take any steps for the protection of persons who had voluntarily separated from their allegiance to the Queen and taken part with the federal or Confederate States. But there were others who had been entrapped into the American service, and he was sorry to hear that the noble lord intended to do no more than continue his remonstrances, which, up to the present moment, had proved quite ineffectual. If the noble earl inquired of the secretary of war, he would learn that about five thousand men, chiefly bachelors, were now embarking every week at Cork for America, that they were provided with free

passages paid for in greenbacks, and that as soon as they landed they were either put on board American ships of war or sent to one or other of the American armies. While all this was going on the noble lord would also learn that we could get no recruits in Ireland for our own regiments, and that the military authorities were actually going to reduce the recruiting depot at Cork.

EARL RUSSELL said that if the noble marquess would furnish him with reliable evidence of illegal transactions at Cork or elsewhere he would at once order the parties to be prosecuted.

The motion agreed to.

APPENDIX No. XVIII.

REPORT OF THE CASE OF THE ORETO OR FLORIDA IN THE VICE-ADMIRALTY COURT OF THE BAHAMAS. PUBLISHED BY THE BRITISH GOVERN- MENT AS AN APPENDIX TO THE ALEXANDRA CASE.*

THE CASE OF THE ORETO.

In the Vice-Admiralty Court of the Bahamas.

OUR SOVEREIGN LADY THE QUEEN *vs.* THE BRITISH STEAMSHIP ORETO, her tackle, &c., seized by Commander Henry Dennis Hickley, esq., commanding her Majesty's ship Greyhound, for an alleged breach of foreign enlistment act.

Decree of his honor the judge, pronounced in the above case on the 2d day of August, A. D. 1862.

The advocate general, the Hon. G. C. Anderson, on behalf of the Crown.

Bruce L. Burnside, esquire, on behalf of the claimant.

The British steamship Oreto has been seized by the commander of her Majesty's ship Greyhound on the alleged ground, as appears by the libel, that James Alexander Duguid, now or lately master of the said ship, and others exercising authority over her, have, without leave of her Majesty the Queen, and within the jurisdiction of the Bahamas, attempted to equip, furnish, and fit out the said steamship Oreto, with intent that she should be employed in the service of certain persons exercising or assuming to exercise the powers of government in certain States claiming to be designated and known as the Confederate States of America, to cruise and commit hostilities against the citizens of the United States of America, her Majesty the Queen being at the time at peace with the said United States, and have thereby acted in violation of the act 59 Geo. 3, c. 69, commonly known as the foreign enlistment act.

Now, to support the libel it is necessary that proof should be given—1st, that the aforesaid parties, having charge of the Oreto while the vessel was within the jurisdiction of the Vice-Admiralty Court of the Bahamas, attempted to equip, furnish, and fit her out as a vessel of war; 2d, that such attempt was made with the intent that she should be employed in the service of the Confederate States of America; and, 3d, that such service was to cruise and commit hostilities against the citizens of the United States of America. Witnesses have accordingly been produced to prove that the Oreto is constructed for and fitted as a war vessel; that acts have been done in her, since she came to Nassau, which constitutes an attempt to equip, fit, and arm her as a vessel of war. That from certain conversations which were overheard between the master of the vessel and a person who came out passenger in her, and from certain acts done by this person, there is proof that she was intended for the service of the Confederate States of America, and to cruise against the citizens of the United States.

It has been contended by the proctor for the respondents that proof ought also to have been given that her Majesty the Queen was at peace with the United States of America, as the court cannot take judicial notice of that fact. That it ought to have been proved that there is such a place as the Confederate States of America, and that proof should have been given that no leave had been obtained to fit the Oreto as a vessel of war. Without entering further into the subject, I will dismiss these points by stating my opinion, that the court is bound to take judicial notice of her Majesty's proclamations, and that in the proclamation of the 13th of May, 1862, the Confederate States of America are named, and it is also alleged that her Majesty is at peace with the United States of America, and that as the allegation in the libel, that there was no license from her Majesty to fit the Oreto as a vessel of war, has not been traversed, the court has a right to assume that it is admitted.

* Particularly referred to on pages 606 and 612 of vol. II, and in Parliamentary and Judicial Appendix, No. 15, page 250.

A responsive plea has been put in by the defendants.

1st. Denying that there was any agent of the owners or persons interested in the Oreto of the name of John Lowe, on board of her, as affirmed in the libel; that the said Lowe was merely a passenger and never exercised any power or control over the vessel.

2d. Denying that James Alexander Duguid, the captain, or any person exercising authority over the said steamship, attempted to equip, furnish, or fit out the said ship with intent that she should be employed in the service of the Confederate States of America, to cruise and commit hostilities against the citizens of the United States.

3d. That while the Oreto lay in the river Mersey, immediately previous to her sailing for this port, British men-of-war frequently passed and repassed her, and that she was at all times in a conspicuous and public position without having been seized or arrested, or subjected to detention, and that she quitted Liverpool in the open day without any manner of haste or secrecy; that the master, while she was so lying in the Mersey waiting instructions from the owner, directed the mate to employ the crew during their leisure hours in doing ordinary ship's work, fitting gear, stropping blocks, &c., during which time, as well as after she sailed, certain spare blocks which were then on board, and which were intended solely for the use of the ship as part and parcel of her rigging, and not in any way whatever as blocks for gun tackles, or as part of the furniture of guns, were stropped by the said crew, and the said blocks were never known or called as gun-tackle blocks, until a certain Edward Jones, a man of infamous and abandoned character, who had been shipped on board in the capacity of boatswain, called them gun-tackle blocks. That neither the said Alexander Duguid, nor any person whatsoever, having authority over the said steamship during the time she was at the port of Nassau, ever gave any orders or directions to strop blocks as gun-tackle blocks, or to strop any blocks whatever. But any blocks which may have been stropped on board the said ship was done by the seamen of the Oreto in their ordinary avocations, and is always done on board merchant ships in order that they might have employment on board, and not for the purpose of fitting the Oreto as a vessel of war.

4th. That no faith or credit ought to be given to the depositions of Charles Ward, a witness for the party proponent, that he is a man of abandoned character, and is actuated by malicious and vindictive feelings against the said James Alexander Duguid, and has sworn falsely for the purpose of carrying out an avowed intention of doing an injury to the said J. A. Duguid.

On the evidence given in support of this plea I shall remark as I proceed.

The evidence which has been produced in support of the prosecution may be classed into two parts:

1st. That which relates to circumstances which occurred *before* the vessel arrived within the jurisdiction of the Admiralty Court of this colony.

2d. That which applies to facts done *subsequently* to such arrival.

To the first division belong the construction and fitting of the vessel before she left England, the flags or other materials which she had on board when she sailed, and the conversations or remarks of the parties in charge of her while on her passage from England.

To the second division belong the proceedings on board the vessel after her arrival within the jurisdiction of the Bahamas Vice-Admiralty Court.

From the evidence appertaining to the first division I abstract the following, which is all that I think in any degree material:

Mr. Wynne Fitzjames Duggan, the chief mate of the Oreto, says, "I am chief officer of the Oreto. The number of men, all told, on board was fifty-two or fifty-three. I believe that was an ordinary crew. We had not too many. We had no cargo. The Oreto was fitted (when she left England) as she is now. All vessels are not fitted alike. I have seen some ships fitted with regard to bolts in ports as she is. I have seen vessels intended to carry cargo fitted as she is. Some of Green's and Wigram's ships are so fitted. There was a passenger on board whose name was Lowe. He did not, to my knowledge, exercise any authority over the ship."

In the cross-examination, Mr. Duggan says, "I had access to every part of the Oreto. I have gone right through the vessel. I have never seen any implements of war or any ammunition on board of her. The shot boxes were full of cabbages, turnips, and potatoes."

William Porter, a seaman of the Oreto, deposes that the vessel had no stowage room for cargo. She was not fitted as merchant vessels usually are. She had a magazine. He says, "I believe there were shell rooms. I was in a room where shells were stowed. She had light rooms. They are not usual in merchant vessels. She had boxes for shot. She had two gigs, a life-boat, pinnace and dingey. I took her to be a gun-boat."

"We had a passenger named Lowe on board. As far as I could see, Mr. Lowe had a little authority on board. On one of the mess kids being broken, I heard Mr. Lowe say to Captain Duguid, he ought to take better care of the things. Mr. Lowe has given me different orders, and told me to steer different courses when I was at the helm."

Cross-examined: I "cannot say whether Captain Duguid knew it; I might have been reprimanded if he had."

Peter Hanson, a seaman of the *Oreto*, says: "The *Oreto* (meaning when she sailed from England) was fitted just as she is at the present time. I have not been in steam-boats before. I have been in sailing vessels. I have never been on board one fitted like the *Oreto*. There is no place for cargo."

Walter Irving, a fireman of the *Oreto*, states: "I have served on board steamships before; I have been so serving six or seven years. The *Oreto* was not fitted like steamships I have been serving in before, they were merchant ships and passenger vessels. I did not see any cargo on board the *Oreto*, there were shot and shell boxes, and a place which the crew called a magazine. I know a flag they call the confederate flag, I saw one on board the *Oreto*; I saw it on the quarter-deck before we came in here; I saw it among other flags. There was an American and a French flag. There was a passenger on board named Mr. Lowe, he seemed to have great interest in the ship."

With respect to the flag mentioned by this man, I will observe that had there been a confederate flag on board the *Oreto*, I should not consider it as very powerful evidence, inasmuch as it was with American, French, and other flags, and might have been sent on board with a general assortment of flags which many merchant vessels have. But it will be seen that Captain Duguid in his examination swears that there was no confederate flag on board. He states, that when the flags were sent on board the ship at Liverpool, they were wrapped up in separate papers, and marked with their respective names. That seeing one marked "confederate flag," he immediately sent it ashore, fearing that the possession of such a flag might involve them in some trouble should they be boarded by an American vessel of war. Drawing my conclusions from the manner in which his evidence was given, and all the accompanying circumstances, I cannot but be of opinion that there was no confederate flag on board after the ship left Liverpool, and, consequently, that the witness, Walter Irving, and the man Ward, who gives evidence to the same effect, have stated as far as regards the confederate flag what is not true.

Thomas Robinson, a fireman of the *Oreto*, states: "I have served on board of ocean steamers, in the Great Britain and Great Eastern steamships, and in the Cunard line of boats; there was a great difference in the fitting of the *Oreto*."

John Quin, a fireman of the *Oreto*, says: "I have been to sea ten years; I have been employed in merchants' steamboats, in passenger vessels, and vessels carrying troops. I never served on board a steam vessel in the merchant service fitted out like the *Oreto*."

Charles Ward, the steward of the *Oreto*, says: "The *Oreto* had not the appearance of such merchant vessels as I have been in before. There were shot lockers, and a magazine, gun-room, shell-room, &c.

"Mr. Lowe was a passenger in her; four or five days after we sailed he came to me and told me to be careful and keep an account of everything, as it would be saving a good deal of trouble when the crew would be leaving, and her guns and ammunition put on board, and a new crew shipped, and very likely everything would be done in a hurry, and he said he would reward me handsomely. I have heard him repeatedly tell the captain to get things done as he wanted them done in the ship, and he was guided by Mr. Lowe on the voyage in the working of the ship and getting things done; this has happened several times. I heard the captain, Mr. Lowe, and the chief engineer speak with regard to the ship. I always understood them to say she was fitted for the southern government as a gunboat, whether for the government or a private gentleman I cannot say; they were conversing in the cabin.

"There was a flag in the captain's cabin; it had one white stripe and two red ones on each side of the white, and in the corner there was blue, with stars in it. I don't know the secession flag. I heard Mr. Lowe tell the captain that he treated the slaves on his plantation better than he (the captain) treated the men. Mr. Lowe stated that he would make a different arrangement when he came to port, and he did.

"I heard Mr. Lowe tell Captain Duguid to get those gun-tackle blocks shipped and put away, not to be used for any purpose at present. This was before we came here."

With respect to this evidence, I will here observe that Charles Ward had been imprisoned by Captain Duguid for some alleged misconduct; that he gave his evidence evidently under feelings of resentment. Now, when the meaning of any conversation or remark he may have heard depends so much on the *ipsissima verba* which were spoken, the inferences which he may draw from them may be such as their import did not justify, and this evidence must, therefore, be received with great caution. The slightest difference in the words made use of in a conversation or observation, or the occasion which caused it, may give that conversation or remark an entirely different meaning from that which the speaker intended to convey; and it does appear to me rather unlikely that conversation or remark of this nature should have taken place in the presence of the steward, or in the immediate vicinity of a place, within hearing distance, where he would be very likely to be.

Captain Duguid has sworn that no conversation as Ward describes took place. Cap-

tain Duguid's statement is worth, at least, as much as Ward's; I shall, therefore, not consider these conversations to have been proved. It is true, as was stated by the advocate general, that Captain Duguid may be an interested witness; to what extent he may be so I do not know, but if the evidence of an interested witness may be legally given, although it should be received with caution, it certainly is not invalidated on that account. Captain Duguid states in his evidence that Ward threatened when he came out of jail to fix him and the ship too. Ward denies having used this threat, but I am inclined to believe that he did. However, let one assertion be placed against the other; yet I must say that I did not feel at all satisfied with the manner in which Ward gave his evidence. He says: "Mr. Lowe told me to be careful and keep an account of everything, as it would be saving a good deal of trouble when the crew would be leaving and the guns and the ammunition put on board and a new crew shipped."

Now, allowing that there could be any connection between the things which a steward would have charge of, and the leaving of the crew, which I do not see, what possible connexion could they have with the shipping of guns and ammunition? I cannot but think it highly improbable that Mr. Lowe would have made so uncalled-for, so irrelevant, and, to a stranger, as this steward was to him, so imprudent a speech. Again he says, Captain Duguid was guided by Mr. Lowe during the voyage in the working of the ship. Can anything be more improbable than this? He says in another part of his evidence, "I heard Mr. Lowe tell Captain Duguid to get those-gun-tackle blocks stropped, and to put them away, not to be used for anything at present. This was before we came here."

This Captain Duguid denies, and, as I said before, Duguid's oath is certainly as much to be relied on as Mr. Ward's.

The observations which I made respecting the confederate flag when commenting on the evidence of Walter Irving, apply equally to the evidence of Ward. I will only add that I think it very wonderful that he should have been so long both in Liverpool and here, and not know a confederate flag.

Captain Hickley, after stating certain motives which induced him to go on board the Oreto, to examine her, gives the following evidence:

"At noon on the 10th of June I went on board the Oreto with some officers and men, for the purpose of thoroughly examining her, and I found her discharging what I supposed to be shell, at the time of going on board. I should have followed out my intention of thoroughly searching the vessel; but as she was clearing at the time and the consignee assured me that she had cleared in ballast for the Havana, and as I actually thought this was the case, this testimony being strengthened by that of the revenue officer, I thought further interference on my part unnecessary, and so I quitted the ship." After some few details, to which I do not think it necessary to advert, he goes on to say, "I quitted the ship with the understanding that I was to again visit her previous to her leaving; some days elapsed, and being convinced in my own mind that the vessel was not acting in good faith, I determined before leaving to make a thorough overhaul; accordingly on the 13th day of June I proceeded on board with the officers and men chosen, on its being reported to me that the vessel had cleared in ballast by the consignee. On my first going over her side, the captain informed me that the crew had refused to get the anchor up, unless they got a guarantee from myself or the governor, as to where she was going; and on the captain calling the crew aft, and requesting them to state their grievances to me, the men did so in what I consider an orderly and proper manner, and in no mutinous spirit whatever, as far as I am capable of judging. I then proceeded to examine the vessel, and found her in every respect fitted as a war vessel, precisely the same as vessels of a similar class in her Majesty's navy. She has a magazine and light-rooms forward, hauling-room, and handling scuttle for powder as in war vessels, shell-rooms all fitted as in men-of-war, a regular lower deck with hammock-hooks, mess shelves, &c. &c., as in our own war vessels; her cabin accommodations and fittings generally being those as fitted in vessels of her own class in the navy. After making this thorough investigation, I quitted the vessel to make my report to his excellency the governor and the law officer of the Crown. On Sunday the 15th, the boatswain and a portion of the crew of the Oreto having made reports to me that I thought made it incumbent on me as a public officer to act promptly on, I forthwith seized the Oreto, concluding that his excellency was in church at the time, and made him acquainted with it as soon after church as possible. I received a protest that afternoon, and a letter the following day, against, and calling for an explanation of, my proceedings on behalf of the captain, on the seizure of Sunday. A correspondence took place between myself, his excellency, and the law officer of the Crown, which ended in my releasing the Oreto on Tuesday the 17th; and on the vessel being released on this occasion, on further conversation and correspondence with the governor, it was deemed necessary finally to detain the vessel for adjudication in the Vice-Admiralty Court. I found guns on board of her; she is a vessel capable of carrying guns; she could carry four broadside guns forward, four aft, and two pivot guns amidships. Her ports are fitted to ship and unship port bars cut through on the upper

part to unship also; the construction of her ports I consider is peculiar to vessels of war; I saw shot boxes all around her upper deck calculated to receive Armstrong shot, or shot similar; she had breeching bolts and shackles and side-tackle bolts.

"Magazine, shell-rooms, and light-rooms are entirely at variance with the fittings of merchant ships. She had no accommodation whatever for the stowage of cargo, only stowage for provisions and stores.

"She was in all respects fitted as a vessel of war of her class in her Majesty's navy."

In the cross-examination Captain Hickley says the opinions of the governor and the law officer of the Crown were to the effect that the vessel was not liable to seizure; this was after my report of the 13th, after I had made my first examination with the exception of clearing the holds. "The reason I considered she was acting in bad faith was because she did not sail on the 13th. When I go on board of her, the first thing I am made acquainted with is the crew refusing to get the anchor up, because they do not know where the ship was going, although she cleared in ballast for the Havana, and the crew could not get anybody to satisfy them on the point as to where the ship was going." Captain Hickley then proceeds to state his opinion on various points, such as the right to build vessels adapted as vessels of war without her Majesty's leave, the right of seamen to refuse going on any voyage which may prove ruinous to them, and he mentions various circumstances which caused him to inspect the *Oreto*. He says, "It is impossible for a vessel to fight without guns, arms, or ammunition on board, but the *Oreto* as she now stands could, in my professional opinion, that is to say, with her crew, guns, arms, and ammunition going out with another vessel alongside of her, be equipped in twenty-four hours for battle." Captain Hickley makes some statements respecting a man named Jones; but as this man has gone away and has given no evidence in the case, I think it is unnecessary to take further notice of him. Alluding, however, to the information given to him by Jones, Captain Hickley says, "On this public report I seized the vessel again, and Mr. Cardale, the second lieutenant of the *Greyhound*, was put in charge of her." Captain Hickley's evidence as to the constructions and fittings of the vessel I should consider conclusive, even had there been no other; but that construction and those fittings were made, not here, but in England, and of whatever nature they may be, do not subject the vessel to forfeiture here. Captain Hickley, it appears, on certain grounds which he states, seized the *Oreto*; but acting on the opinion of the law officer of the Crown and that of the governor, he subsequently released her. Between this time and that of her ultimate seizure there is no evidence whatever that she did anything in violation of the foreign enlistment act; but Captain Hickley's suspicions were aroused by the vessel not sailing for two or three days after that, on which the consignee informed him she would; he, therefore, again went on board the *Oreto*, and found that the reason of her not going was, because the crew had refused to get her under way on account of their not being satisfied as to what port she was bound to. I must confess I look upon this as exonerating Captain Duguid and others concerned from suspicion of *mala fides* for not having gone at the time specified by Mr. Harris, but Captain Hickley took a different view of it, and he thereupon seized the vessel again. Now, if he did this, as seems implied in part of his evidence, on account of the crew not being able to obtain satisfactory information as to the destination of the vessel, I can only remark that he did it on ground which is not within the purview of the statute under which she is libelled; but if Captain Hickley thought proper, on a reconsideration of the whole case, to seize her again, he had a right to do so.

Lieutenant Cardale gives nearly the same evidence as Captain Hickley did respecting the construction and fitting of the *Oreto*, proving that she is in every way adapted to be used as a vessel of war. He gives his opinion that the vessel could be fitted with her guns in twenty-four hours, supposing great exertions were made with plenty of hands, and that everything was sent on board ready fitted for use—that is, the gun-carriage slides, train-tackles, side-tackles, and all the equipments of the guns.

With reference to what Captain Hickley as well as Lieutenant Cardale say respecting the probability of fitting the vessel with guns, ammunition, &c., in a certain time, I have to observe that this evidence may be perfectly correct, but that I have no right whatever to take it into consideration; the case depends upon what has been done since the vessel came within this jurisdiction, and can in no way be affected by what it is possible might be done at some future period.

Mr. Stuart, the master and pilot of her Majesty's ship *Greyhound*, corroborates the evidence of the *Oreto* being built and fitted as a vessel of war.

With respect to acts which were done, or circumstances which occurred on board the *Oreto*, before she came within the jurisdiction of the Bahamas Vice-Admiralty Court, it is admitted and is clear that the court has no authority to adjudicate. The only ground then on which evidence of those facts or circumstances can be admitted at all is, that it may explain or elucidate acts which have taken place since the arrival of the vessel in this port. The strapping of blocks that might be used as gun-tackle blocks or the taking of shells on board of a vessel built as a vessel of war, might afford ground for suspecting that such vessel was intended to be used as a vessel of war,

when the same suspicion would not attach to a vessel not adapted for the purposes of war; and if there were evidence that a vessel was being armed for war purposes, the conversation of the parties so arming her, though occurring out of the jurisdiction of the court, might be evidence to point out for what purpose she was being armed. I proceed now to the evidence of what took place *after* the arrival of the Oreto in the Bahamas.

The chief mate Duggan says, "The vessel arrived at Nassau and went to Cochrane's anchorage; some tackle-blocks were fitted on board of her, some there, and some on the passage out. I do not know to what use they were to be applied; they were spare blocks, and we fitted them in case they might be wanted; I do not know if they are what are called side-tackle or train-tackle blocks; I never saw a gun used in my life; I can't say if they were fitted as gun-tackle blocks are. I directed them to be fitted; no one ordered me to have them fitted; they are such blocks as are usually used as watch tackle or luff-tackle blocks on board merchant vessels; there was nothing put on board the vessel at Cochrane's anchorage but coal and a spare spar. We came into this harbor from Cochrane's anchorage; no fittings were put on the vessel in this harbor. There were some cases of shells came on board as cargo; we stowed them aft in a room which the boatswain called the shell room: I have seen a similar compartment in merchant vessels; we called it a store-room. I have seen the store-room filled with cargo in merchant ships; I don't know how many cases of shell came—some two or three hundred; they were put out again the same evening or next day; I don't know the reason for discharging them; I was ordered by the captain to discharge them. The stropping of watch-tackle blocks were in the ordinary avocations of the seamen on board. There were no guns on board the ship that these blocks could be used for." He adds, "I do not know that Captain Duguid or any one else had the intent that the Oreto should cruise or commit hostilities against any state, province, or people; I do not know that Captain Duguid or any one else attempted to equip, furnish, or arm the Oreto with that intent."

William Porter, a seaman of the Oreto, says: "We went to Cochrane's anchorage. There were blocks strapped for guns. I cannot say how many; they were blocks such as could be used for merchant vessels, but they were not to be used as such."

I will here ask, How does he know this? It is mere opinion, without any specified ground.

When the Oreto came into Nassau harbor cases of shells were put on board. The next day between breakfast and dinner we were worked hurriedly to get them out; they were all cleared out before night; orders were on two occasions given to get the anchor up; we refused to get the ship under weigh. Next day we all got police summonses. Our sole objection to get the vessel under weigh was that we had been deceived."

And on cross-examination he says: "I had never seen a gun-tackle until I saw one on board the Greyhound. I did not know they were gun-tackle blocks on board the Oreto. *All I know is from what I heard from one of the seamen.*"

Mr. Porter's evidence must be taken *quantum valeat*.

Peter Hanson, seaman, says: "While we lay at anchor, blocks were stropped, two sheaf blocks. I had orders from the chief mate to get the gun-tackle blocks stropped, and to do them as neat as possible, as they would have to be handed over to some person else, and there might be no fault found with them. There were no guns on board; the blocks were too small for luff-tackle blocks; they can be used on board a merchant vessel; they are used for several purposes, but not such a quantity; there were more than were necessary for the usual use of the vessel. We came into the harbor; some shell was put on board; it was stowed underneath the cabin. Some was put on board in the evening and some next morning; we had just finished before dinner when we were told to discharge them again. We set to work to get them out, worked very hard, and the shell were discharged that day. We were ordered two mornings to take up anchor; we disobeyed both times. We did not mutiny, we only wanted to be sure of British protection; we were in consequence summoned to go before the magistrate.

Hanson, it will be observed, states that he had orders from the chief mate to get the "gun-tackle blocks" stropped, but whether he means that the mate made use of that term, or whether he merely uses it himself to designate the blocks he is speaking of, does not clearly appear. He says they could be used for several purposes on board a merchant vessel, but not such a quantity. He grounds his belief then, that they were to be used as gun-tackle blocks, on his opinion that there were more of them than were required for the ordinary use of the vessel.

Walter Irving, a fireman, says: "I saw the men fitting blocks all the spare time they had; they were called gun-tackle blocks by the crew of the ship; as far as I can say, they were twenty or more. She remained at Cochrane's anchorage six or seven weeks, and then came into this harbor. I saw shell come on board of her and go out again."

Thomas Robinson, fireman, says: "We arrived at Nassau, went to Cochrane's anchorage; a passenger called Mr. Lowe came out with us; I saw him go ashore in a boat the first day we arrived; he came on board while we were at Cochrane's anchorage two or three times. The only orders I ever heard him give on board the Oreto was to some divers

that were putting on some copper. I have seen the sailors working at blocks while at Cochrane's anchorage; they were putting straps on them; I heard them call them gun-tackle blocks. When the Oreto came into Nassau harbor some cases came on board which were called shell. I saw them coming out of the vessel again next day."

John Quinn, fireman, states: "There was a passenger on board the vessel named Lowe; I saw him and another person looking at the galley the day they were fixing on the piece of copper at Cochrane's anchorage. A gentleman said to Mr. Lowe that it was a very dangerous place to have the galley in. Mr. Lowe said that he would get it altered. Two or three days after, the galley was shifted on the upper deck." Captain Duguid, it will be seen in his evidence, denies that Mr. Lowe had anything to do with the moving of the galley; he explains reasons for moving it, and states that it could not have remained where it had been moved to, when the vessel was under weigh. "Mr. Lowe frequently came on board the vessel at Cochrane's anchorage. I saw the men, while at Cochrane's anchorage, working at blocks, stropping and painting them. I did not know what they were for; they were called by the men gun-tackle blocks.

"The ship quitted Cochrane's anchorage and came into this port. There were some little square boxes, which they said were shot or shell, taken on board after she came in. I think they were taken out the next day."

Neither this nor the two preceding witnesses knew that the blocks they were speaking about were gun-tackle blocks, but they heard them called so by some of the crew.

Charles Ward, formerly steward of the Oreto, says: "Mr. Lowe went in the ship to the anchorage; he left her there, but came on board several times while we were there. He provisioned the ship." Mr. Harris swears, it will be seen, that Mr. Lowe had nothing to do with provisioning the ship; "that he (Mr. Harris) gave orders to Turtle and Miller to send provisions on board. He asked me one day if I would like to join the ship after he got the other crew on board. On one occasion the captain and chief engineer and Mr. Lowe came on board and had tea, and they had some words. Mr. Lowe told the captain and chief engineer that he wanted to provision the crew in a different manner. He said if they would even eat three or four or five pounds of meat a day he would send it to satisfy them; and Mr. Lowe told the chief engineer he was no more than a boy in the ship, and had nothing to do with the matter, and he was qualified to do his own duty. The chief engineer said that if Mr. Lowe wished, he would leave the ship and go home when Captain Duguid did, and break the contract. Mr. Lowe then went on deck. I afterwards heard the captain say, it was nothing out of his pocket, he did not care how the ship was provisioned, as he knew she belonged to the southerners, and he did not care for northerners or southerners as long as he got his pay out of the ship. This was while she was at Cochrane's anchorage."

In his cross-examination, he says: "I quitted the ship at Cochrane's anchorage. The captain put me in prison, where I remained fourteen days. The magistrate put me in for refusing to do seaman's duty, which I did not sign for. I know a Mr. Jones, we were both in jail together. He came out the day before me. He and I went to live at the Clifton Hotel. I had no money when I quitted the Oreto. On the morning I came out Jones said he would pay my way. I heard the captain, chief engineer, and Mr. Lowe say, the ship was for the southerners. I know from what I heard Mr. Lowe say, that he provisioned the ship. I heard the captain, the chief engineer, and Mr. Lowe say, that she was intended for the southerners. I also heard them say that if she had her guns on board she could compete with anything the northerners had."

I here repeat the observation I before made, that this evidence ought to be received with great caution. What the witness gives in evidence is, the inference he draws from certain conversations which he states he overheard. Now, if we had the very words which were spoken, we might not draw that inference. Knowing the powerful vessels which the federal States possess, I can hardly believe that a nautical man would utter such an absurdity as that a small vessel like the Oreto could compete with anything the northerners had; and I think it very improbable that Mr. Lowe would tell the chief engineer that he was no more than a boy on board the ship. Now, from several improbabilities which Charles Ward's evidence contains, from its being positively contradicted by respectable witnesses in some parts, and from the unsatisfactory manner in which the man appeared to me to give his testimony, I attached but little weight to it.

Daniel Harvey, coal trimmer: "Mr. Lowe gave me orders to make travelers for boats' masts and stanchions for the dingy and gig boat. He said they would do very well. Mr. Allan, the chief engineer, gave me a paper with the pattern on it, and said that Mr. Lowe said he would rather have them made of iron than wood. Mr. Lowe asked me if I would like to remain by the vessel for a commission; he did not say how long; it might be for two or three years; as greaser and blacksmith. This conversation took place two or three days before he left Nassau."

Thomas Joseph Waters gives the following evidence: "I met a gentleman named Lowe once or twice. I heard he had come out in the Oreto. I left this place some time ago in a vessel called the Nassau. Mr. Lowe was a passenger with me in that

vessel. We were bound, I believe, to a confederate port. I wished to go to Charleston. I do not know where this vessel was bound to. We were captured off Wilmington by a federal war steamer called the Georgia, and a gunboat called the Victoria. After the capture of the vessel she was carried to Fort Monroe, and afterward to New York. Mr. Lowe was carried with the vessel. He was brought before the prize court at New York, examined, and set at liberty."

This evidence is merely to show that Mr. Lowe was connected with the Confederate States of America. It appears, however, that the prize court at New York saw no ground for detaining him.

Mr. Stuart, the master and pilot of the Greyhound, says: I also saw many double blocks fitted. Eight might be in use for ship's purposes for luff-tackle blocks, but the residue *might* be used for side strain tackle, that is, for working at guns. I should say, there were more than double or treble the number required for the ordinary use of the vessel."

He then states having seen some of the boxes of shells which were put on board in this harbor.

It appears that the men belonging to the Oreto who have given evidence on the part of the prosecution had had a quarrel with the captain, and that they had been before the magistrate. This must be taken into consideration in weighing their evidence.

Hon. G. D. Harris: "I am a member of the firm of Henry Adderley and Company of this town, merchants. We do foreign commission business. I know the British steamship Oreto, she arrived in this port consigned to our care. I made application to the receiver general on behalf of the firm to know if there was any objection to our shipping arms and other merchandise by that steamer, and requested that he would communicate with the governor in order that there might not be any possible misunderstanding. The receiver general informed our firm a day or two afterwards that he had communicated with the governor, and that there was no reason why we should not ship a cargo of arms or any other merchandise by that vessel, and that he was fully authorized to grant his permission, which he then immediately did. We then made the usual entries, and applied for a civil officer of customs. Before, however, any cargo was transhipped, we received a letter from the colonial secretary informing us that as the build of that vessel had excited some suspicion, the governor directed that, if practicable, she should come into the harbor and take in her cargo under the immediate eyes of the authorities, or words to that effect. She was accordingly brought into the harbor, and certain cargo was taken on board; I believe under the supervision of an officer of the customs. Some of the cargo consisted of shell. They were certainly not live shell. This cargo that we were putting on board was what we had received special permission to put on board from the receiver general. It was put on board under our direct orders as consignees of the vessel."

The consignees, it appears, changed their minds about the destination of the vessel, and ordered the shell to be taken out, intending that the vessel should go immediately in ballast to Havana. When the cargo was nearly discharged, Mr. Harris met Captain Hickley on board the Oreto. On that occasion he says: "I informed Captain Hickley that we had given orders for the discharge of the Oreto's cargo, it being our intention to dispatch her in ballast to Havana, and that the custom-house officer then present was prepared to hand me the clearance after ascertaining that the cargo was entirely discharged. The landing waiter and searcher were present and heard what I said. Captain Hickley then informed me that he considered he had nothing further to do with it. I came to shore with Captain Hickley after he had ordered his men into their boats. I think the custom-house officer had the clearance in his possession, and I do not know whether he showed it to Captain Hickley. It was afterward given to us. (The clearance was produced.) In accordance with a promise I had given Captain Hickley, I sent a message on board the Greyhound to inform him that the vessel was ready for sea, and to ask if he would like to visit her or send officers to inspect her. He wrote to me that he would do so immediately. I know Captain Hickley went on board, but I was not present. We had some difficulty with the crew. They set up a plea that the vessel not having touched at Palermo there had been a deviation of the voyage and therefore they claimed their discharge. We demurred to this, but afterwards agreed to pay them their wages up to date and give them a bonus of \$1. and pay their passage to England if they would not remain in the ship. This they refused to accept; stating that from the several visits of the man-of-war on board the vessel they considered she was of a suspicious character, and that they would not go in her unless the governor and Captain Hickley guaranteed their safety. Some accepted the terms that were offered. In consequence of this they were summoned before the police magistrate and the case was brought under his adjudication. They elected to take their discharge. I was present at the time; they then and there agreed to quit the ship. They then obtained leave to go on board for their clothes. The men were discharged by the magistrate. In consequence of this we got a shipping master to ship another crew for the Oreto. I think there were fifteen or sixteen new hands then shipped. They received the usual advance. It was our intention to send her immediately to sea. I

had arranged with the pilot to take her out the following morning, (Sunday;) they, however, missed the tide, the crew not having come on board. The vessel was again seized that day. The crew we shipped then left the Oreto. I have not seen them since, and all the advance we paid is lost. We had the sole direction and management of the Oreto. I know of no person but Captain Duguid having any control over the Oreto. I have seen a person named John Lowe, who came out passenger in the Oreto. Mr. Lowe while at Nassau never exercised any authority over the Oreto. We never received any instructions from him relative to the Oreto. The day the vessel arrived we received a message from the captain, requesting us to send meat and other provisions on board. I gave orders to Turtle and Miller to supply the vessel with meat. In placing the cargo on board the Oreto it was distinctly understood as cargo. I stated to the receiver general that it was cargo only; that we intended to ship a full load by that vessel. We were fully aware that we could not ship such goods otherwise than as cargo, unless committing a breach of the foreign enlistment act, and had we been ordered to do so, we should have handed the consignment over to some one else. No act was done by authority of Henry Adderley and Company with the intent that that vessel should be employed as a cruiser. I told Captain Duguid, very shortly after he arrived here, that they were talking a good deal about the build of his vessel, and I said, 'Mind, do nothing that will have the appearance of equipping.'

On the cross-examination, he says: "The vessel was consigned to us by Messrs. Fraser, Trenholm and Company, of Liverpool. She was consigned as a merchant vessel, and we considered her as such. No instruction in the first instance was given to us, except the general instructions of shipping cargoes by all their vessels to Messrs. W. and R. Wright, St. John's, New Brunswick, on account and risk of J. R. Armstrong, of Liverpool. Mr. John Lowe, I think, brought a letter of introduction from Mr. Trenholm to the firm. I do not know whether Mr. Lowe was in any way interested in the Oreto. I do not recollect Mr. Lowe being mentioned in any correspondence which we received from Fraser, Trenholm, and Company. We never had any transactions with Mr. Lowe in regard to the Oreto. She remained here several weeks before any attempt was made to ship cargo in her. We thought we should receive some instructions from our friends about her, but we did not. The shipping of the cargo on board the Oreto was performed by us under our general instructions. I am not prepared to say whether the vessel was actually going to St. John's, New Brunswick. There ought to have been a searcher of the customs on board at the time of the loading and unloading. I am not aware that there was. In this case I particularly requested that one might be put on board."

It will be seen that Mr. Harris distinctly negatives the idea that Mr. Lowe had any control over the Oreto while in Nassau, or that the consignees had any transactions with him in regard to her.

Frederick T. Parke says: "I am a master mariner; I have commanded steamships, and now command the Minho. I have seen the Oreto. I have not been on board of her. I know her size. I think four or five dozen spare watch and luff-tackle blocks sufficient for a vessel of the Oreto's size. A new vessel in fitting out generally takes more extra blocks than a vessel that has been a voyage."

On cross-examination, he says: "Luff-tackle are used for cargo, for taking in boats, and for other heavy purposes. Watch-tackle blocks are used in a variety of ways; blocks are called luff-tackle, watch-tackle, or gun-tackle blocks, according to the purposes to which they are to be applied. They can be applied in various ways."

William Raisbeck says: "I am a master mariner; I have never before commanded a steamship. I command the Leopard. I have seen the Oreto. A vessel of her class ought to have thirty or forty blocks, including the luff and watch-tackle blocks, not less. I consider that would be a reasonable supply for a vessel of that kind."

Thomas Joseph Waters says: "I have been a master mariner for five years. I have always commanded steamships. I have seen the ship Oreto. She is a first-class ship, and they would never send a vessel of that class from London with less than four or five dozen blocks."

Richard Eustice says: "I am a master mariner. I commanded the steamship Scotia. I have commanded steamships for six years. I know the Oreto by seeing her. I am thoroughly acquainted with what is necessary for the fitting of a steamship. I think at least fifty or sixty spare blocks would be a fair quantity for a new vessel like the Oreto. I mean watch-tackle and luff-tackle blocks. A steamer that is sailed must necessarily have more blocks than one that is entirely propelled by steam. I could muster up thirty or forty luff-tackle and watch-tackle blocks on board of the Scotia. The Scotia is not more than half the size of the Oreto. The Oreto is rigged as a sailing ship."

Captain Parke then thinks the Oreto should have four or five dozen spare watch and luff-tackle blocks; Captain Raisbeck thinks she should have thirty or forty blocks including luff and watch-tackle blocks; Captain Waters thinks she should not have less than four or five dozen blocks; and Captain Eustice thinks she should have at least fifty or sixty spare blocks.

The evidence we have of the number of blocks on board the *Oreto*, is that of Walter Irving, a fireman, who says, "As far as I can say, there were twenty or more," and that of Mr. Stuart, the master of the *Greyhound*, who says, there were more than twenty-four tackle.

James Alexander Duguid: "I am master of the *Oreto*. On the day of our sailing (that is, from Liverpool) there were a few friends of the owners dining on board the vessel. There were no toasts on that occasion drunk, the only one that was drunk, that I am aware of, was the one I proposed myself; which was, 'Success to the vessel and her owners!' I never heard any one propose a toast on board the *Oreto*, 'Success to the *Oreto*, may she be triumphant over her enemies!' I am certain such a toast was never proposed. I heard a man named Ward give his evidence, in which he swore to that toast having been given. The owner of the *Oreto*, I believe, is named Mr. Thomas. I took my instructions from Fossel, Preston and Company, the agents. I was lying in the Mersey from the 4th to the end of March. During that time the crew were employed doing the ordinary work of the ship. I gave orders with regard to the blocks on board the vessel. It is usual in the merchant service for the chief officer, when he cannot find employment for the men himself, to ask the master what he wishes to have done. I told him, rather than let the men be idle, to let them fit all the spare blocks, which he did. This was while we were lying in the Mersey. I never gave any orders to fit blocks as gun-tackle blocks. I never ordered blocks to be fitted, intended to be used as gun-tackle blocks. I quitted the Mersey about the end of March, the destination of the vessel having been changed twice in the meantime; and when I quitted the Mersey I was bound to Nassau. A Mr. Lowe came out with me to Nassau; he came out as a passenger. He never to my knowledge exercised any authority over the *Oreto*; I only recognized him on board the vessel as a passenger.

"There was not, to my knowledge, a confederate flag on board the *Oreto*; she is a new vessel. With the ordinary stores of the vessel a parcel of flags came on board of her; they were all tied up in thick, brown paper, and all labeled outside. Previous to my quitting Liverpool I overhauled the parcel of flags, and, in so doing, I saw a parcel marked 'confederate,' which I sent on shore without opening. My object in doing so was, as the vessel was bound to Nassau, if we fell in with an American cruiser, they might think themselves justified in seizing or detaining the vessel. I swear that there was no confederate flag on board the *Oreto* when she passed Point Lynas, where the pilot landed. I have heard Ward, and another of the men examined, swear that there was a confederate flag on board the vessel, which was false.

"I remember speaking a vessel on the voyage out. I did not, on that occasion, say, 'If we had our bull-dogs on board I would make you answer quick enough.' I never thought of such a thing. I heard Ward say that I had made use of that expression, which he has sworn falsely to.

"I arrived here at the latter end of April; I went to Cochrane's anchorage, and I communicated with H. Adderley and Company, as the agents of the vessel representing my owners in England. I had no instructions when leaving England who the agents of the vessel were, but, on my arrival here, I understood they were. Mr. Lowe had a letter, and told me that Messrs. H. Adderley and Company were the agents of the vessel, and they would enter the ship. I remained at Cochrane's anchorage seven weeks; we were waiting orders from the agents, who were waiting orders from the owners at home.

"During the time the *Oreto* lay at Cochrane's anchorage, I do not believe that I gave any orders to my men to strop blocks. I saw on two or three occasions men stropping blocks, and I never had a thought that those blocks should be used on board the *Oreto* as gun-tackle blocks, for the purpose of arming her to cruise against any foreign state. I never heard them called gun-tackle blocks. It is about six weeks since the *Oreto* came into the harbor of Nassau. I brought her in by the direction of H. Adderley and Company. Cargo came on board with a boat note requesting me take on board shell as cargo. I took in upward of four hundred boxes. On the second day I received orders to discharge the shell, as the destination of the vessel had been changed, and, if we could get them landed in time that day, the vessel would be cleared for the Havana. We discharged them with all possible haste to get them landed in custom-house hours. During the time we were receiving and discharging cargo, I saw a custom-house officer on board, I think by the name of Webb; I saw him on board two or three times, but he might have been oftener on board, as I was on shore two or three times.

"While we were discharging shell we were boarded by Captain Hickley and the officers and men from the *Greyhound*. Captain Hickley stopped the further discharge of the cargo.

"While Captain Hickley was on board Mr. Harris came. I heard Mr. Harris tell Captain Hickley that the vessel was cleared for Havana. After this Captain Hickley quitted, and told me, as she was cleared for Havana, I could sail when I pleased.

"The shell was taken on board by the direction of the agents. I never thought it was intended for the vessel, neither did I know that it was.

"I was boarded again by the same officers and men from the *Greyhound*, four or five

days after the first occasion. The vessel was then searched. Previous to her sailing the officers and men of the Greyhound searched her.

"We had some men engaged on Saturday to proceed to sea on Sunday morning, but, owing to their not coming on board in time, we could not get the vessel unmoored in time for the tide. She was on that day seized by the officers of the Greyhound.

"Two mornings following, previous to this seizure, I mean on Friday and Saturday, I ordered my crew to get the vessel under weigh; but they refused, stating that I had deceived them once, and that they would not believe what I told them again. I told them she was cleared for Havana, and bound there, as far as I knew. They still continued to refuse to work, and said that they would not believe anything about what I told them. In consequence of this I sent warrants on board for them. They all appeared before the magistrate. They said that they would not proceed in the vessel unless they were guaranteed that they would be safe from any American cruisers. They then said that they would take their discharge, and the whole of them took their discharge." (It appears they afterward went on board, got their clothes, and left the vessel.)

Captain Duguid goes on to say: "I know a man named Ward; he is my steward; he was sent to prison for a fortnight at my instance. I think the day he come out of prison he made use of very abusive language and threats to me down on the wharf, stating that he would fix me before he had done with me, and the vessel too. I know a man named Jones; he shipped on board the Oreto as boatwain. He was disrated, when about half of our passage out, for incompetency. He quitted the ship at Cochrane's anchorage, taking the boat with him. I do not know if he is in the country. I have not seen him. I have heard that he is gone away. I am very sorry that Jones has gone away, I would rather have him here. On the oath I have taken I have not myself been privy to Mr. Jones leaving this place, or to making him any recompence of any sort for leaving it, nor do I know of any person connected with the Oreto having done so. During the time the Oreto lay in the Mersey, she was passed and repassed by men-of-war. At one time men-of-war were lying within a mile of her. Officers of the navy were passing her every hour in the day. The fittings of the Oreto, from the time of her quitting Liverpool up to the present time, are the same, with the exception of the little alteration in the boats' davits. Four of them were lengthened two feet. That is the only alteration since she left Liverpool. I have not, since the Oreto has been in harbor, attempted to fit her out in any shape that she might cruise or commit any hostilities against any foreign state. The shipping of the blocks at Cochrane's anchorage was done under the order that I gave when at Liverpool. As I do not remember having given any order than that to ship blocks, I had no intent, nor would I do so, to use the Oreto to commit hostilities against any power or state. Mr. Lowe never gave me any orders to stop blocks, or any other orders connected with the vessel. Mr. Lowe took sights at sea, asking me to allow him to do so, as he wanted practice, but he never navigated the vessel, changed her course, or gave any orders to the crew with my knowledge. I was present when Ward was examined, when he said some conversation took place between Mr. Lowe and myself relative to the vessel being for the South. No such conversation took place at Cochrane's anchorage or at any other time. Mr. Lowe had nothing to do with the removal of the galley. I had it done for the convenience of the men, as it was too hot for them where it was below."

On cross-examination he says: "I received my instructions from Messrs. Fosset, Preston and Company as to the voyage. They were written. (The instructions were produced.) In the conversation referred to in the letter, dated 22d March, 1862, I proposed going to Nassau instead of Havana. No instructions were given to me as to the ultimate destination of the vessel after she reached Nassau." (Captain Duguid then gives some evidence as to the fittings of the vessel, but as it does not affect the evidence already given on that point, there is no necessity to repeat it.)

"I saw the men employed at Cochrane's anchorage stopping blocks; I never at Cochrane's anchorage heard those blocks called 'gun-tackle blocks.' The first time that I heard the term 'gun-tackle blocks' used was in this court. I have not, that I am aware of, any blocks on board the Oreto called gun-tackle blocks. I saw in the log-book of the ship that they had been called gun-tackle blocks; I saw that entry since the vessel arrived here. I am not aware whether the entry was made after the vessel arrived here. On the 16th of May there is an entry in the log-book, 'Hands employed in scraping the mainmast and stopping the gun-tackle blocks.' There is a word struck out in the entry in the log-book of the 9th of June; I am not aware of my having struck it out. I had no knowledge whatever, when the vessel cleared for Havana, that she was ultimately bound to the Confederate States of America. I have no knowledge whether the vessel was to return to Europe or not. I have no knowledge one way or the other. I have no knowledge whatever that she had been sold, or agreed to be sold to any persons in the Confederate States. I struck out some parts of the log-book, but I will not undertake to swear that I struck out the word in the entry of the 9th of June, referred to as follows: 'Received on board four hundred and forty cases of shell and stowed them in the — room.' After 'the' there is a word scratched

out, between the word 'the' and 'room.' I have never stated that the vessel was intended for a vessel of war.

"The galley was moved; the caboose was in the galley; it was in its proper place. That galley was in the mess deck. It will have to be placed there again before the vessel can go to sea, as it was only shifted for the convenience of the men. When I was preparing to go to sea on the 15th of June, I had not attempted to remove the galley. There was not time; we could have done it after the anchor was up. Where it was originally placed, it was not near the magazine; it was removed as far as possible from it. If the magazine was filled with powder, I think it would be quite safe if the galley were in its proper place.

"The ship while at Cochrane's anchorage was frequently visited by Mr. Lowe. I don't know when Mr. Lowe left this. I think he left in a vessel called the Gordon or Nassau. I have not seen him since."

The question now to be decided is, whether upon a careful consideration of the evidence there appears proof or circumstantial evidence amounting to reasonable proof, that a violation of the provisions of the foreign enlistment act has been committed by the parties having charge of the Oreto; 1st, by attempting, by any act done since she came into this colony, to fit or equip the Oreto as a vessel of war; 2d, by making such attempt for the purpose of fitting and equipping her as a vessel of war for the service of the Confederate States of America, to cruise and commit hostilities against the citizens of the United States of America. I have already said that what took place *before* the vessel came here can only be received as elucidatory or explanatory of what occurred *since* that time. Two facts have been proved, both of which, it has been contended, are violations of the act. One is, that while the vessel lay at Cochrane's anchorage some blocks were stropped in such a manner that they might be used as gun-tackle blocks, and that they were so called in an entry in the ship's log-book, and by some of the crew. The other, that a number of boxes containing shells were put in the ship after she came into this harbor, and were taken out again.

I first notice the evidence relating to the shells.

A permission from the governor in council to ship cargo in the Oreto has been given in evidence; this does not prohibit any kind of cargo; shells might, therefore, be shipped under it as well as any other kind of cargo. It appears, by the evidence of Mr. Harris, one of the consignees of the vessel, that everything relating to the shipment of the shells was done openly and *bona fide*. It was observed by the advocate general that penal statutes need not now be constructed so strictly as they formerly were. Supposing that to be the case, there is no doubt that it is necessary to act on them with great caution. Now, what is the proof that these shells were intended for the arming of the vessel? Why is it not as probable that they were intended to be carried as many similar cargoes have been, and landed at some other port? Mr. Harris, who shipped them, swears they were intended as cargo. Captain Duguid does the same, and so does Mr. Duggan, the chief mate. What proof is there, either direct or circumstantial, that these gentlemen have sworn to what is false? It will be remembered that these shells were taken out of the Oreto, and landed *before* the vessel was seized. The original intention, therefore, with regard to the shells, whatever it may have been, had been abandoned before the seizure was made. Is, then, the mere probability that such original intention was to arm and equip the vessel for war purposes sufficient for imputing the crime of perjury to Mr. Harris, to Captain Duguid, and to Mr. Duggan, and for the condemnation of the vessel for a violation of the foreign enlistment act? I certainly think not.

The stropping of the blocks now alone remains to be considered.

While the vessel lay at Cochrane's anchorage strops were put on some blocks which had been brought in her from England. The blocks so stropped might be used as gun-tackle blocks, but blocks so stropped may also be used for the ordinary purposes of a merchant ship. What proof is there, then, that they were to be used as gun-tackle? 1st, it is contended, because they were named gun-tackle blocks in an entry in the ship's log-book, and were so called by some of the crew; 2d, because there were more of them than could be required for the ordinary use of the ship's luff-tackle, or watch-tackle, and then, it is argued, if the blocks were intended as gun-tackle blocks, the Oreto having been constructed as a war vessel, it is to be inferred that they were intended for her equipment.

The other side in reply contend, 1st, that as the tackle might be used for either of the purposes before mentioned, the mere circumstance of the mate, in his entry in the log-book, or some of the crew, not knowing for what they were really intended, choosing to call them gun-tackle blocks, is no proof whatever that the owners of the vessel intended to use them as such; 2d, that the evidence of Captains Parke, Raisbeck, Waters and Eustice, all master mariners and men of much experience, has proved that the number of blocks on board the Oreto is not at all greater than would be required for the ordinary purposes of the ship, especially as she is a new vessel, on board of which a greater number of spare blocks is usually provided than is to be found in vessels that have been in use. That Captain Duguid unequivocally states in his evi-

dence that the blocks were solely for the ordinary use of the vessel, and were never intended to be used as gun-tackle blocks. That he never ordered them to be stropped as such, or heard them called so until he heard the evidence given in this court.

Comparing, then, the evidence on the one side with that on the other, I agree in the opinion that the mere fact of blocks which might be used for other purposes being called gun-tackle blocks by persons who did not know for what purpose they were intended, is not proof that they were intended to be used as gun-tackle blocks. I think that as the fact of there being more blocks on board the *Oreto* than were required for her use, is a matter of professional opinion; and as the opinion of several master mariners quite competent to form a correct one has been given in the evidence, that there were *not* more blocks on board the vessel than might have been required for ordinary use, I ought not, in the absence of any valid and producible reason for so doing, to adopt the opinion of one party in preference to that of the other. The consequence of which is, that the fact of there being more blocks than could be required for the ordinary use of the vessel is not sufficiently proved.

Lastly, I see no evidence to invalidate the direct and positive testimony of Captain Duguid, that the blocks were *not* intended to be used as gun-tackle blocks.

If there is not enough proof that the blocks in question were intended to be used as gun-tackle blocks, any observation as to the probability arising from the construction of the ship that they were for her equipment becomes unnecessary.

If the evidence given to prove that any act has been done here subjecting the vessel to the penalties of the foreign enlistment act is not sufficient for that purpose, it is, perhaps, superfluous to say anything about the capacity of the vessel to take cargo, or her connection with the Southern States of America. I will, however, observe that although the ship may not be calculated to carry the ordinary bulky cargo of merchant ships, yet there are certain kinds of cargo of which she might carry a considerable quantity. For example, there were some hundreds of boxes of shells put on board of her, and these were stowed in a compartment called the shell room. There yet remained what is called the magazine, the light rooms, and other places, besides the cabin. Into these a very large number of muskets, sabres, pistols, and other warlike instruments and ammunition might be stowed. And it is not improbable that a fast vessel of this description might be used for what is called "running the blockade," an employment which, however improper in itself, would not subject the vessel to forfeiture here.

I think, too, that the evidence connecting the *Oreto* with the Confederate States of America, as a vessel to be used in their service to cruise against the United States of America, is but slight. It rests entirely on her connection with a gentleman named Lowe, who came out passenger in her, and some evidence has been given, from which it may be *inferred* that this Mr. Lowe is connected in some way with the Southern States. He is said by some of the crew to have exercised some control over the *Oreto*. This is denied, on oath, by Mr. Harris and Captain Duguid. But, assuming it to be true, and assuming also that Mr. Lowe is connected with the Confederate States, no one can state that Mr. Lowe or his employers, if he have any, may not have engaged the *Oreto* for the purpose of carrying munitions of war, which we have seen she is capable of doing, and this would not have been an infringement of the act under which she is libelled. But the evidence connecting the *Oreto* with the Confederate States rests almost entirely on the evidence of the steward, Ward, whose testimony I have already explained my reasons for receiving with much doubt.

Under all the circumstances of the case, I do not feel that I should be justified in condemning the *Oreto*. She will therefore be restored.

With respect to costs, although I am of opinion that there is not sufficient evidence of illegal conduct to condemn the vessel, yet, I think all the circumstances of the case taken together were sufficient to justify strong suspicion that an attempt was being made to infringe that neutrality so wisely determined upon by her Majesty's government. It is the duty of the officers of her Majesty's navy to prevent, as far as may be in their power, any such infringement of the neutrality. I think that Captain Hickley had *prima facie* grounds for seizing the *Oreto*, and I therefore decree that each party pay his own costs.

APPENDIX No. XIX.

DEBATE IN THE HOUSE OF LORDS OF FEBRUARY 16, 1864, RELATIVE TO BRITISH AND AMERICAN CLAIMS.*

[From Hansard's Parliamentary Debates, vol. 173, pp. 618-635.]

HOUSE OF LORDS, February 16, 1864.

UNITED STATES—BRITISH AND AMERICAN CLAIMS—MOTION FOR RETURNS.

THE EARL OF CARNARVON rose to move for "returns of claims made by British subjects upon the United States government, sustained either in person or property since the secession of the southern States, specifying how and the grounds on which such claims have been disposed of, and to ask for any further information as to claims made by the United States government upon her Majesty's government for damages alleged to be done to American ships by the Alabama and other confederate cruisers." The noble earl said: My lords, the notice which stands upon the paper in my name divides itself into two parts. In the first part I ask for a return of all the claims made on the American government by British subjects for injuries sustained either in person or property since the commencement of the civil war, and for which the federal government is deemed responsible. I presume there can be no real objection to this part of the return. It is not open to the objection sometimes made that it may prejudice negotiations in progress, because it is simply a summarized statement of the particular claims which have been made, and the grounds on which they have been accepted, rejected, or disposed of by the American government. I can easily understand that it may not be quite practicable to make that return complete, or precise, but I shall be satisfied if it is an approximate return, and puts the House and the country in general possession of the facts. I can easily believe that, under the peculiar circumstances of the United States government, many claims have arisen to which many counter claims and objections may have been made, and which require the most grave and serious consideration, and I should be the last person to show any want of forbearance to the government of a country situate as the government of the United States is. Wherever we can safely assume a *bona fide* intention on the part of the federal government to do that which is right, we ought not to be very minute in marking that which has been done amiss. With regard, too, to those British subjects—and the case is by no means an unfrequent one—who have gone out to the United States within the last few years with the intention of acquiring the rights of American citizens, and consequently of divesting themselves as far as lies in their power of their nationality and allegiance to the Crown, and have only been prevented from carrying out that purpose by recent events—though they may not have wholly forfeited the protection which the British Crown extends to all its subjects everywhere, still they do not come into court with a very satisfactory case, and do not possess a very strong claim on the consideration of Parliament. But in the case of persons who are clearly British subjects, and who on mere suspicion have been arrested, put into prison, subjected to indignities and hardships—sometimes even imperiling their lives—her Majesty's government, I think, are bound to require the amplest compensation and redress at the hands of the federal government. Then, again, there is another class of British subjects who are in a position to make claims for redress. There are British subjects who have engaged in a legitimate trade, and who, while acting in conformity with international law, have, nevertheless, seen their ships condemned in American prize courts on principles which, if correctly reported, are of a very questionable nature. I have indeed always thought that we, who in former wars have jealously maintained certain principles of international jurisprudence, ought not to depart from those principles now that our position is reversed, and we have become neutrals instead of belligerents. But at the same time, if the statements we have received of the judgments in the American prize courts be correct, there can be no doubt that neutral rights are almost brought to the verge of extinction. I will not now go into that question, but there are two cases on which I must say one word.

* Transmitted with dispatch No. 599 from Mr. Adams to Mr. Seward, February 18, 1864, see vol. III, p. 245.

The first is that of the Saxon, which must be familiar to all your lordships, inasmuch as it has already appeared in every newspaper. If that case be correctly reported, it appears to me one of the most monstrous that has ever appeared before Parliament. That ship was an English ship, and was taking in a cargo at an island at no great distance from one of our settlements on the coast of Western Africa. It is said that the island (Angra Pequena) had been annexed by proclamation to the Cape Colony in 1861, by Sir George Grey, but that that proclamation had never been confirmed by the colonial office. I believe that, looking to the practice of the colonial office, it will be found that proclamations of this sort have not been ratified sometimes till one, two, and three years afterward. But however this may be, the ship was taking in her cargo, and on the point of sailing, when she was boarded by an armed boat's crew, from a federal vessel, the Vanderbilt. The captain was sent down and the American lieutenant ordered the crew below. The mate of the Saxon was going down the ladder when the lieutenant pushed him on the shoulder, and, as the unfortunate man turned round to see who it was that touched him, the American officer drew a revolver and shot him dead. If this statement be true, there certainly never was a more wanton, atrocious, or barbarous murder committed on the high seas. The captain of the Vanderbilt is said to have expressed his regret at the occurrence, but I hope that the government will require something more than a mere expression of regret. The only compensation which can satisfy the honor of the country and the justice of the case is to bring the offender to speedy trial and to execution, if the case be proved against him. This transaction took place in the middle of September five months ago. It is hardly a case which can require much communication or negotiation; and I hope, therefore, that the noble earl will be able to lay the correspondence on the table, or name an early day for its production. There is also another case to which I wish to call the attention of the House, and in doing so I will take the opportunity of asking the noble earl a question with respect to it. I see it stated in the newspapers that a confederate vessel, the Tuscaloosa, has been seized by order of the government, in Simon's Bay, near the Cape of Good Hope. That ship is referred to in the papers recently laid before Parliament, and she is stated to have been a federal ship originally, captured by the Alabama, and converted into an armed tender to that vessel. She appeared at the Cape last year, when the United States consul demanded that she should be detained. The governor, however, did not consider himself at liberty at that time to take that course. The facts were brought under the consideration of her Majesty's government, and this is what the noble earl wrote on the subject:

"As regards the Tuscaloosa, although her Majesty's government would have approved the British authorities at the Cape if they had adopted towards that vessel a course different from that which was adopted, yet the question as to the manner in which a vessel under such circumstances should, according to the tenor of her Majesty's orders, be dealt with, was not one altogether free from uncertainty. Nevertheless, instructions will be sent to the British authorities at the Cape for their guidance in the event of a similar case occurring hereafter, and her Majesty's government hope that under those instructions nothing will for the future happen to admit of a question being raised as to her Majesty's orders having been strictly carried out."—*Correspondence No. 1, (1864), p. 43.*

It is, no doubt, under the instructions here mentioned that the authorities of the Cape acted when they arrested the vessel, and I trust that the noble earl will have no objection to lay them on the table. I come now to the second part of my notice, which refers to claims put forward by the United States government upon the British government for damages alleged to have been done to American ships by the confederate cruiser the Alabama. Your lordships have doubtless seen the correspondence relating to the Alabama, which was placed upon the table of the House a few days ago. It is not long, but it contains matter of serious importance. It comprises five different series of applications from Mr. Adams on the part of the United States government. The first application was made on the 19th of February last year, and was presented in consequence of the destruction of the Brilliant and the Manchester, and repayment was demanded for the value of the cargo and the ship, with interest thereon. On the 9th of March the noble earl replies to Mr. Adams, and disclaims all connection with the Alabama, and all responsibility for the mischief she may have done. On the 29th of April another claim was made by Mr. Adams on account of the destruction of the Golden Rule, which was simply acknowledged by the noble earl. Again a third application was made on the 7th of July, and on the 13th of July the noble earl returned an answer referring to his first dispatch, and again disclaiming all responsibility for the acts of confederate cruisers. On the 24th of August there came another claim for the destruction of the ship Nora by the Alabama, and I should like to read to your lordships the description there given of the Alabama. The owners of the ship, in their memorial to Mr. Seward, say:

"The vessel calling herself the Confederate States man-of-war Alabama is an English vessel, and no other. The said steamer was allowed to leave port under the pretense of making a trial trip and has never been in any port of the

so-called Confederate States, so as to change her flag, or to be otherwise than a British vessel. * * * Your memorialists would further represent that said steamer, after thus fraudulently leaving the ports of Great Britain against the Queen's proclamation of neutrality, repeatedly visited oceans within the jurisdiction of certain British islands in the Atlantic ocean, when and where it was well known and patent to the world that she had destroyed American vessels on the high seas; and instead of being seized and detained by the British government, as they were in duty bound to do, was allowed every facility for obtaining supplies and advice, and to resume her piratical cruises. * * * In view of these matters, and of others which may be made to appear, your memorialists do now and forever enter their solemn protests against the British government and people as willing parties, negligently culpable in the destruction of their property on the high seas, and thus in first violating the proclamation of the Queen by building and manning said steamer, and then allowing her to continue her depredations."—(p. 17.)

These are the terms in which the Alabama is described, and in which the claims of the American marine are urged upon the British government. A few days after the noble earl repeats his disclaimer, and winds up with the hope—very properly expressed, I think—that no such claim may ever be brought under the consideration of her Majesty's government again. But the application to which I would call the especial attention of the House is that referred to in a letter from Mr. Adams, dated the 23d of October. In this letter Mr. Adams renews the charges he had previously made with regard to the depredations of the Alabama, and then proceeds:

"Upon these principles of law, and these assumptions of fact, resting upon the evidence in the case, I am instructed to say that my government must continue to insist that Great Britain has made itself responsible for the damages which the peaceful, law-abiding citizens of the United States sustain by the depredations of the vessel called the Alabama."—(p. 27.)

I would ask your lordships to observe the similarity of that language with the language used in the dispatch of the 11th of July, which has been so much spoken of. There is, however, this difference—that in the letter from which I have just quoted Mr. Adams proceeds to qualify his language in these terms:

"In repeating this conclusion, however, it is not to be understood that the United States incline to act dogmatically, or in a spirit of litigation. They desire to maintain amity as well as peace. They fully comprehend how unavoidably reciprocal grievances must spring up from the divergence in the policy of the two countries in regard to the present insurrection. They cannot but appreciate the difficulties under which her Majesty's government is laboring from the pressure of interests and combinations of British subjects, apparently bent upon compromising by their unlawful acts the neutrality which her Majesty has proclaimed and desires to preserve, even to the extent of involving the two nations in the horrors of a maritime war. For these reasons I am instructed to say that they frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question. Though indulging a firm conviction of the correctness of their position in regard to this and other claims, they declare themselves disposed at all times, hereafter as well as now, to consider in the fullest manner all the evidence and the arguments which her Majesty's government may incline to proffer in refutation of it; and, in case of an impossibility to arrive at any common conclusion, I am directed to say there is no fair and equitable form of conventional arbitration or reference to which they will not be willing to submit."—(p. 27.)

On the 26th of October, three days afterward, the noble earl, in answering that dispatch of Mr. Adams, uses these words:

"You add, further on, that the United States frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question."—(p. 42.)

Up to that dispatch I entirely assent to nearly every word used by the noble earl in this correspondence. I had felt persuaded that it contains not merely the drift, but the plain view, of the intentions of her Majesty's government. It appeared to me that from the first the noble earl had declined all responsibility connected with the building of the Alabama, and with the depredations which she was alleged to have committed. Nothing can be plainer and more complete in every way than the noble earl's language; but after all this the noble earl ends by accepting the proposal for an arbitration.

EARL RUSSELL. No.

THE EARL OF CARNARVON. At a future period?

EARL RUSSELL. No.

THE EARL OF CARNARVON. The noble earl says "no;" but on reading the dispatch from which I have just quoted, can any one come to any other conclusion than that the noble earl did accede to the proposal for arbitration at a future period? Mr. Adams asks for arbitration, and the noble earl says:

"With this declaration, her Majesty's government may be well content to await

the time when a calm and candid examination of the facts and principles involved in the case of the *Alabama* may, in the opinion of the government of the United States, usefully be undertaken."

I very much regret, whatever may be the intentions of the government, that the noble earl ever used such language as that; arbitration applies to a question in which there is some doubt; but if there is a perfectly clear right—a perfectly unquestionable one—then men do not arbitrate. If her Majesty's government feel any doubt as to the propriety of the position which they had taken throughout the previous correspondence, let them say so. It is never too late to go back if one has committed an error; and here I must observe that the noble earl did on one occasion use an ominous expression—namely, that the case of the *Oreto* and the *Alabama* was a scandal and a reproach to English law. If the noble earl is decided and clear in his opinion, he had better say so. If he believes that those claims are founded neither on reason nor on justice, then he should hold out no shadow of hope that they can by any possibility be admitted. But it is unwise to endeavor to tide over a present difficulty by creating a much greater one for a future time. I would urge upon her Majesty's government, as far as my feeble voice can do so, to bring this matter to a conclusion. I entirely agree in the opinion expressed by the noble earl in his earlier dispatches, that there is no ground for those claims; but it would be even better to admit and satisfy them, at whatever expense, than to allow the matter to run on unsettled and indefinite, and at length to be compelled to undergo the humiliation of retracting the word you have said. My lords, I cannot see that there is any practical advantage in leaving a question of this sort unsettled. There are two classes of politicians, as this House must know, in America, who look at this matter from different points. One class—composed of, I believe, honest men, but men holding very mistaken views—are convinced that the *Alabama* sailed from these shores through the fault and negligence of her Majesty's government, and hold us accountable for the damage which she has done to the American marine. The American estimate of the amount of that damage is a very heavy one. I do not at all make myself responsible for its accuracy, but according to that estimate, one hundred and forty-eight American ships were destroyed or bonded from the time of the sailing of the *Alabama* to the 30th of June, 1863. The tonnage of those ships is stated to be 61,292 tons, which, at a valuation of £10 per ton, amounts in money to a loss of £612,920. To this is added a sum of £20 per ton, making a total of £1,100,000 as the value of the cargoes, and a sum of £760,000 for Chinese cargoes, which bring up the entire loss to £2,412,920. I do not know whether this is a correct estimate, but there can be no doubt that great injury has been inflicted on American commerce. This is shown by the heavy rates for insurance now prevailing, and by the considerable sale of American ships which has recently taken place to other nations. Well, my lords, this class of politicians to whom I have already alluded are smarting under a strong sense of personal injury, and they urge their claims against our government in no measured language. And I must say that the government of America, from whatever motive, have so lent themselves to their views that hereafter, when this sum is rolled up into a very much larger one, it will be absolutely impossible for that government to restrain the machinery which they themselves have put in motion. I therefore think it is most important that her Majesty's government should bring this matter to a settlement one way or the other. But there is a second class of American politicians, and they make no secret of their object—they have openly and avowedly said that they will wait until the embarrassment of England shall be America's opportunity, when they will be ready to resort to hostilities in order to wipe off some fancied national humiliation. This should impress upon the noble earl the importance of at once settling this question. And, my lords, in our political intercourse with America, if there be any conclusion which we ought to have drawn from past history, it is this—that it is the policy of English statesmanship to limit these debatable questions, and not allow them either from accident or design to be kept open. You might number up a score of those questions, which by being kept open have affected very considerably the good relations between the two countries, caused great irritation both here and in America, and at times threatened very disastrous consequences. Such were the questions of Maine boundary line, of the Oregon line, and of the fish controversy. Not many years ago, a dispute arose with regard to the boundary line at Vancouver's Island. The island of San Juan was taken possession of by a hot-headed American officer, and it was only owing to the exercise of great tact and forbearance that hostilities were averted. Now, it should be the object of good statesmanship to put an end as soon as possible to all these questions of debate and litigation. But in these dispatches, whether intentionally or no I do not know, the noble earl holds out, in order to tide over the present difficulty, some vague and shadowy hopes of means by which differences may be reconciled. But I warn him to beware lest he thus deliberately create, in order to relieve himself from present embarrassment, a difficulty which may be ten times as formidable and ten times as dangerous as a fishery or a frontier dispute, inasmuch as it will be backed by stronger material interests, founded on personal considerations, and in all probability supported by an unreasoning mob. The noble earl then moved an address for "Return of claims made

by British subjects upon the United States government, sustained either in person or property since the secession of the southern States, specifying how and the grounds on which such claims have been disposed of."

EARL RUSSELL. My lords, the noble earl seems to suppose that I shall have no difficulty in granting the first part of his motion, relating to the returns of claims mutually made by the United States government and the British government in respect of injuries sustained since the secession of the southern States. Now, so far as her Majesty's government are concerned, there will be very little difficulty in giving any information that is asked for as to representations which have taken place on the part of the government; but when I consider the public utility to be served by this motion, I cannot encourage the noble earl to press it. The fact is, that these dispatches upon cases arising from time to time, and almost from day to day, become formidable in point of extent. I saw in the Foreign Office to-day a volume, not indeed a very thick one, but one of several folio volumes, many of them exceedingly thick, which are said to contain about half of the returns which the noble earl moves for. Now, I ask, what would be the advantage of producing, what would be the advantage of printing, for this House, such a voluminous return of cases that have arisen between this country and the United States? I am quite sure that my noble friend would hardly think of pressing a motion of such a character. And if there is no advantage in it, there may be some disadvantage; because if hereafter there were to be any commission on these claims, the American government would probably take the evidence which had been laid before Parliament as complete with respect to them. They would say: "There is your case. It has been laid before the Foreign Office; it has been presented to Parliament and printed, and it is impossible to go beyond it." If, therefore, these cases were printed, and a commission on claims were hereafter appointed, persons who had claims, and who were prepared to produce further evidence in support of them, might be precluded from the full benefit of that evidence. I cannot, therefore, think that there would be any advantage in producing this voluminous mass of papers. The noble earl seemed to think that our commerce was nearly extinct. [The Earl of Carnarvon dissented.] I took down the noble earl's words, and he certainly said that our commerce on the southern coast of America had been brought almost to the verge of extinction. Now to what do these words apply? It is known that this trade of blockade-running has been a most profitable trade, that great fortunes have been made by many persons in carrying it on, and that Nassau and some other places have swarmed with vessels which had never previously been seen in those ports. That a great number of vessels have been stopped by the American cruisers I readily admit. The noble earl says that the judges of the prize courts in the United States have given decisions some of which are not based upon principles of international law. Now I say here, what I have frequently had occasion to say before, that we are bound in the first instance to accept these decisions; and I think the complaints which have been made very often arise, and naturally arise, from ignorance of the principles of international law, as laid down by Lord Stowell and other great jurists in this country. It has been many times complained of that a vessel bound from this country to Nassau should be captured on her voyage while upon the high seas, and should be sent for adjudication before an American prize court. Evidently the persons who make that complaint think it quite sufficient if the nominal destination was Nassau, and do not take into consideration the circumstance that, if Nassau was not the ultimate destination, but it was merely meant that the vessel should touch at Nassau, and then, without transshipment, carry her cargo into the blockaded port, that vessel, according to the principles laid down by Lord Stowell, would be liable to capture. But it is natural that this should be forgotten when for so many years these belligerent rights have been in abeyance, and the result is that many of the persons who have employed their capital in this manner are severe sufferers. With regard to the Saxon, we were advised that that vessel was taken, not in British, but in foreign waters. The noble earl says that the law officers of the Crown must have been completely wrong, because it was quite sufficient if the governor of the cape had declared the island of Angra Pequena to be a British possession. Now I do not think that we should be guided by such a declaration in an analogous case. Suppose that on the coast of Africa a slaver was taken by one of our cruisers near an island; it would not be sufficient to prevent the capture by the statement that the governor of the neighboring French or Portuguese settlement had declared that island to belong to France or Portugal. We should say at once, "Have the French and Portuguese governments confirmed the declaration?" and if they had not, we should hesitate to acknowledge that the island belonged to either country. The argument which we should use ourselves we ought to accept from another nation; and acting, therefore, on the opinion of the law officers of the Crown, I did not assert that this vessel had been wrongfully captured. What was affirmed by the American captors was, that the Saxon had received from the Alabama and the Tuscaloosa part of the spoil which they had taken from American vessels. The noble earl refers to what appears to us, if the information we have received be accurate, to be the wanton and barbarous murder of the mate of the Saxon. All that we could ask in such a case was

that the person accused of that crime should be tried, and should be brought as soon as possible before a tribunal in which the charge could be fairly examined into. That, accordingly, is the demand which we made. The noble earl says it was no satisfaction that the captain of the Vanderbilt expressed his regret. But I do not know what more he could do. He did not order that the mate of the Saxon should be killed. He had no concern in the murder, but when he heard of the occurrence he expressed his regret. He could not immediately order a trial and have the man convicted and executed.

THE EARL OF CARNARVON. Did the captain order the man under arrest?

EARL RUSSELL. That is a point upon which we have no information. But certainly I do not think it an injury that the captain expressed his regret at the occurrence. I believe it is stated in the newspapers that the man was afterwards put under arrest; that is only a newspaper report. With regard to the Tuscaloosa, that vessel was captured by and was a prize to the Alabama. The law officers of the Crown gave it as their opinion that she should have been detained, and orders were sent out in conformity with that opinion. She has now been detained, and it will be for the noble earl to show that the law officers were wrong in that opinion, and that upon grounds of public law known to himself her Majesty's government should have taken another course. I now come to the noble earl's statement with regard to the Alabama, and I cannot say how much I feel indebted to him for enabling me to clear up a misconception which, as it has affected his mind, may also have affected others in the same way. My lords, her Majesty's government have always maintained that they were in no way responsible for the hostilities against the merchant ships of the United States committed by the Alabama. We have maintained that position from the beginning; we shall maintain it to the end. The noble earl seems to suppose that in a letter of mine of the 28th of October I admitted that these questions would afterwards be referred to a commission. My lords, I admitted nothing of the kind. I stated then, as I have always stated, that her Majesty's government was not responsible for the acts of the Alabama. The United States minister may have in view some kind of commission or arbitration; but her Majesty's government have never consented, and never would consent, to a commission or arbitration. According to all the principles of international law, her Majesty's government are in no way responsible for the doings of the vessel referred to. There has been a question of a commission, but we have always thought that a commission would be of no use, because the United States government would be sure to propose that the case of the Alabama should be referred to the commission, and it is quite impossible that we could consent to that. Therefore we have never proposed what under ordinary circumstances would be a proper course; we have never proposed a commission to consider the respective claims of the subjects of each country, and which the United States government intimated they were ready to agree to, because we knew that it would be proposed to include the case of the Alabama, which we were determined not to consent to. I say, therefore, the government may well await the time when a calm consideration of the principles involved in the case of the Alabama can be given. Every one is aware that for a long time there has been great excitement in America upon the subject of the Alabama; that she has been called a British pirate, and the American nation has been roused to anger against this country for the doings of that vessel. I say that when the United States government say they do not wish to press that question further now, it is fair to believe that a time may come when the United States government, considering all the precedents laid down by their own judges as well as by British judges, will be satisfied that they have no claim against this country on account of the Alabama. My expression was not intended to convey the notion that the British government would change their minds, but that the United States government would change theirs when the excitement of the moment had passed away. Therefore I go on to say:

"The British government must decline to be responsible for the acts of parties who fit out a seeming merchant ship, send her to a port or to waters far from the jurisdiction of British courts, and there commission, equip, and man her as a vessel of war."

And I further say, that if "An admitted principle was thus made elastic to meet a particular case, the trade of ship-building in this country would be seriously embarrassed."

The noble earl, in a manner unaccountable to me—for it never from the time I wrote that letter until now occurred to me that such a meaning could be applied to it, and that it could be understood as admitting a future examination of this case—the noble earl says it is desirable that these cases should not be kept open, but that they should be settled at once. I quite agree with him that they ought to be settled at once, if there is any amicable way in which they can be settled. The American government says, "We have a clear and undoubted case for reparation on account of the Alabama." We say, "We have a clear and undoubted case for refusing reparation in the case of the Alabama." Who is to be the arbitrator, unless we resort to that method of arbitration which the noble earl thinks I agree to? In no way can this question be settled, unless the United States should push us to the verge of war for

the purpose of getting this question settled. The United States government say, "We have a good case, but we are ready to keep it in abeyance, and to continue on terms of amity and friendly relations with Great Britain, if Great Britain will consent to do so." Am I to say, "We will not agree to anything of the sort. Why do you not make war upon us? Why not push your claims to the utmost extremity?" That is the case of the noble earl. He says it is desirable to have these questions settled, and not to have them hanging over us. It is desirable indeed; but how is it to be done while the positions of the two countries are so entirely opposed? I have had the good fortune, in some cases, to bring to an amicable termination matters which had long been causes of dispute between this country and the United States. For many years there was a dispute pending upon the question of the Mosquito Shore and of the Bay Island. The President of the United States said at the time, "If this be the only question of difference," as I believe it was until the secession occurred; "if this be the only question of difference we have with the government of Great Britain, let us endeavor to settle it." I for my part was quite ready to make concessions of what might be considered fair claims on the part of the British government in order to settle the dispute, and happily I was enabled to make a treaty which put an end to that dispute. There was another question which arose since the Ashburton treaty, and which went on for some years, respecting the Hudson's Bay Company, and that dispute it was agreed to refer to arbitration, and a convention has been made for that purpose. So I am by no means indisposed to settle these questions, which, as the noble earl truly says, ought not to be kept open if they can be settled. There is also the question of the island of San Juan, adjoining Vancouver's island, and in that question also I proposed an arbitration, which proposal has been for some time under the consideration of the United States government. That government thought the Senate could not agree to arbitration, but I trust there will be an agreement upon that question also. I think it would be much better that the question relating to the island of San Juan should be decided by an arbitrator than that it should remain a cause of dispute between the two countries. Referring again to the Alabama, the noble earl seems to be much shocked because I said that that case was a scandal and in some sense a reproach upon British law. I say that here, as I said it in that despatch. I do consider that, having passed a law to prevent the enlistment of her Majesty's subjects in the service of a foreign power, to prevent the fitting out or equipping, within her Majesty's dominions, of vessels for warlike purposes without her Majesty's sanction; I say that, having passed such a law in the year 1819, it is a scandal and a reproach that one of the belligerents in this American contest has been enabled, at the order of the confederate government, to fit out a vessel at Liverpool in such a way that she was capable of being made a vessel of war; that, after going to another port in her Majesty's dominions to ship a portion of her crew, she proceeded to a port in neutral territory, and there completed her crew and equipment as a vessel of war, so that she has since been able to capture and destroy innocent merchant vessels belonging to the other belligerent. Having been thus equipped by an evasion of the law, I say it is a scandal to our law that we should not be able to prevent such belligerent operations. I venture to say so much, because at the Foreign Office I feel this to be very inconvenient. If you choose to say, as you might have said in former times, "Let vessels be fitted out and sold; let a vessel go to Charleston, and there be sold to any agent of the confederate government," I could understand such a state of things. But if we have a law to prevent the fitting out of warlike vessels, without the license of her Majesty, I do say this case of the Alabama is a scandal and a reproach. A very learned judge has said that we might drive, not a coach and six, but a whole fleet of ships through that act of Parliament. If that be a correct description of our law, then I say we ought to have the law made more clear and intelligible. This law was said to be passed to secure the peace and welfare of this nation, and I trust it may be found in the end sufficient for that purpose. I say, however, that while the law remains in its present state its purpose is obviously defeated, and its enactments made of no effect by British subjects who defy the Queen's proclamation of neutrality. To these observations I will only add, that, if the noble earl wishes for any other paper relating to the Alabama—I believe there is only one—I should be willing to give it; but as to the folio volume of papers to which I have before referred, I hope the noble earl will not press for their production.

The EARL OF CARNARVON said he had already explained that he did not wish for the correspondence *in extenso*, but would be satisfied with short summaries of each case, containing such details as names, dates, and amounts of claims. There would surely be no difficulty in producing such information. With regard to the interpretation he had put on the language of the noble earl, he thought their lordships would agree that he had been not unnaturally misled, and was justified in asking further explanation. He accepted, however, the explanation the noble earl had given him, and he rejoiced to receive it. He hoped there would be no objection on the part of the noble earl to produce the papers in the case of the Saxon. That transaction had occurred between five and six months ago, and the negotiations in that case must be nearly complete. It was most important that Parliament should know precisely the position in which it

stood in reference to such matters; and when the noble earl challenged him to prove his case, although he was quite ready to take up his challenge, he could not do so unless the noble earl supplied him with the materials. He should only further press for a copy of the instructions which were sent out to the colonial authorities at the Cape of Good Hope, and on which they had acted in the case of the Tuscaloosa. He hoped there would be no objection to give a copy of these instructions.

EARL RUSSELL said that he should have no objection to the motion of the noble earl, on the understanding that names, dates, and other details of that kind only were to be given. With regard to the papers connected with the case of the Saxon, he was quite ready to produce them, if the noble earl would move for them.

The EARL OF CARNARVON then moved for the correspondence or extracts relative to the capture of the Saxon, and for copy of instructions to the colonial authorities relative to the detention of the Tuscaloosa.

EARL RUSSELL said it would be necessary to communicate with the colonial office in regard to the instructions to the authorities at the Cape.

Address for "Return of claims made by British subjects upon the United States government, sustained either in person or property since the secession of the southern States, specifying how and the grounds on which such claims have been disposed of." Also, "Correspondence, or extracts from correspondence, relative to the capture of the Saxon by the United States ship Vanderbilt." And, also, "Copy of instructions to the colonial authorities relative to the detention of the Tuscaloosa."

Motion agreed to.

House adjourned at a quarter past six o'clock.

APPENDIX No. XX.

DEBATES IN THE HOUSE OF LORDS OF APRIL 26, 1864, AND THE HOUSE OF COMMONS OF APRIL 28, 1864, IN RELATION TO THE DETENTION BY THE BRITISH AUTHORITIES AT SIMON'S BAY, CAPE OF GOOD HOPE, OF THE TUSCALOOSA, AT THAT PORT.*

[From Hansard's Parliamentary Debates, vol. 174, pages 1595-1617.]

HOUSE OF LORDS, *April 26, 1864.*

UNITED STATES—THE LAW OF PRIZE.

LORD CHELMSFORD, in rising to call the attention of the House to the statement of the views of her Majesty's government as to the mode of dealing with prizes brought by the belligerent powers of America within the dominions of her Majesty, contained in the correspondence respecting the Tuscaloosa, which has been presented to the House, said that the subject was of such great importance that he would not apologize for submitting it to the attention of their lordships. In the deplorable war which had been so long raging on the other side of the Atlantic both belligerents had shown themselves so extremely sensitive as to the conduct of this country, that it was necessary for the government to be extremely careful not to exceed the strict limit of neutral rights and obligations, and to do nothing not strictly in conformity with the principles of international law. In the papers laid on the table of the House under the title of "Correspondence respecting the Tuscaloosa," he found some instructions issued by the government with respect to the mode of dealing with prizes brought by the belligerents into ports belonging to this country, which appeared to him so much at variance with principle, and policy, and which, if acted upon, seemed so likely to lead to unpleasant consequences, that he felt bound to present to their lordships his views on the matter for their lordships' careful consideration or necessary correction. At the commencement of the present unhappy war in America her Majesty was advised to issue a proclamation interdicting the armed ships of both contending parties from coming with their prizes into the ports, harbors, and roadsteads of the United Kingdom, or of any of the British colonies and possessions. This he thought a wise precaution, and perfectly consistent with our neutral character. The writers on international law laid it down that although it was not a violation of neutrality for a belligerent to bring her prizes into a neutral port, and even to dispose of them there, yet they all added that the neutral might refuse that privilege, provided the refusal extended to both parties. No fault, therefore, was to be found with the proclamation, and the only consideration was as to the proper course of proceeding in case the prohibition should be disregarded. The Tuscaloosa was originally a federal vessel named the Conrad; on the 21st of June last she was off the coast of Brazil with a cargo of wool, and was there captured by the well-known confederate cruiser the Alabama. The captors put some guns on board, placed in her a lieutenant of the confederate navy and ten men, and changing her name to the Tuscaloosa, employed her as a tender of the Alabama. The two vessels were in company at the Cape of Good Hope in the beginning of August, and Captain Semmes ordered the Tuscaloosa to Simon's Bay, for the purpose of obtaining provisions and undergoing some slight repairs. She arrived off Simon's Bay on the 7th of August. The admiral upon the station, Sir Baldwin Walker, who had heard something of the previous history of the Tuscaloosa, doubted whether she could properly be considered as the tender of the Alabama, whether she did not retain her previous character of an uncondemned prize, and therefore whether she could be admitted under the terms of her Majesty's proclamation. He wrote to Governor Wodehouse, and requested that he

* Transmitted with dispatch No. 675, from Mr. Adams to Mr. Seward, April 29, 1864, see vol. III, p. 255.

would take the opinion of the law-officers of the Colony on the subject. The governor accordingly consulted the attorney general at the Cape, who, founding his opinion upon passages of international law which were to be found in Wheaton, and which were printed in the papers, and also upon a dispatch from Earl Russell of the 31st of January, 1862, gave it as his opinion that, by reason of the vessel having been armed by the captors, and having had a lieutenant and crew put on board, the Tuscaloosa had been "set forth" as a vessel of war, and might be permitted to enter the bay. A communication to that effect was made to Sir Baldwin Walker, who was not quite satisfied with the opinion of the attorney general; but, of course, he yielded, and the Tuscaloosa anchored in Simon's Bay on the 8th of August and remained there till the 15th. While she was lying at anchor there the American consul claimed that she should be retained on behalf of the original owners, and that claim had such an important bearing on the instructions which he should bring under the consideration of their lordships that he begged their special attention to it. Having mentioned that the Tuscaloosa's true name was the Conrad, and that she had never been condemned as prize by any lawfully constituted admiralty court, he proceeded to say:

"I am well aware that your government has conceded to the so-called Confederate States the rights of belligerents, and is thereby bound to respect Captain Semmes's commission; but having refused to recognize the 'confederacy' as a nation, and having excluded his captures from all the ports of the British empire, the captures necessarily revert to their real owners, and are forfeited by Captain Semmes, as soon as they enter a British port."—*Correspondence*, No. 6, (1864,) p. 11.

Now the governor with his attorney general seemed to have taken a more correct view of international law than her Majesty's government, for, in reply to the American consul, he says:

"The governor is not aware, nor do you refer him to the provisions of international law by which captured vessels, as soon as they enter our neutral ports, revert to their real owners, and are forfeited by their captors. But his excellency believes that the claims of contending parties to vessels captured can only be determined in the first instance by the courts of the captor's country."—*Correspondence*, No. 6, (1864,) p. 12.

The American consul was not satisfied with that reply, and wrote another letter repeating his claim, and repeating it in the most extraordinary manner. He said:

"The Tuscaloosa, being a prize, was forbidden to enter Simon's Bay by the Queen's proclamation, and should have been ordered off at once, but she was not so ordered. Granting that her Majesty's proclamation affirmed the right of Captain Semmes as a 'belligerent' to take and to hold prizes on the high seas, it just as emphatically denied his right to hold them in British ports. Now, if he could not hold them in Simon's Bay, who else could hold them except those whose right to hold them was antecedent to his, that is, the owners? (p. 12.)

He (Lord Chelmsford) would have said that that claim was as extravagant as the reasoning was illogical, if he had not been checked by finding that it had been sanctioned by her Majesty's government, apparently on the advice of the law-officers of the Crown. The governor sent a dispatch upon the subject to the secretary for the colonies, and he could not refer to the noble duke who lately held the seals of the colonial office without expressing his deep and sincere regret that the country should be deprived, he feared, not for a time only of his long, tried, and eminent services.

In that dispatch Governor Wodehouse says:

"An important question has arisen in connection with the Alabama, on which it is very desirable that I should, as soon as practicable, be made acquainted with the views of her Majesty's government. Captain Semmes had mentioned, after his arrival in port, that he had left outside one of his prizes previously taken, the Tuscaloosa, which he had equipped and fitted as a tender, and had ordered to meet him in Simon's Bay, as she also stood in need of supplies. When this became known to the naval commander-in-chief, he requested me to furnish him with a legal opinion; and whether this vessel could be held to be a ship of war before she had been formally condemned in a prize court, or whether she must not be held to be still a prize, and, as such, prohibited from entering our ports. The acting attorney general, founding his opinion on Earl Russell's dispatch to your grace of the 31st of January, 1862, and on Wheaton's International Law, stated in substance that it was open to Captain Semmes to convert this vessel into a ship of war, and that she ought to be admitted into our ports on that footing."—*Correspondence*, No. 6, (1864,) p. 5.

It was in reply to that dispatch that the answer was sent by her Majesty's government, to which he was about to direct their lordships' attention, and he could not help thinking that the instructions conveyed in it were the result of federal pressure. He ought not to make that assertion without proof, but he thought he was in a position to prove it, and it would be for their lordships to say how far he was successful. During the time in which the proceedings to which he had referred were going on, a very active correspondence was being prosecuted between the noble earl, the foreign secretary, and the American minister, upon the subject of what Mr. Adams called the "depredations" of the Alabama, and the claims of American citizens to be indemnified

for the losses which they had sustained by the capture of their vessels by the Alabama. Those claims the noble earl of course repudiated, but Mr. Adams mentioned many causes of complaint, and amongst them he sent to the noble earl the extraordinary claim of the American consul at the Cape, to which he (Lord Chelmsford) had direct their lordships' attention. In the papers No. 1, North America, the correspondence respecting the Alabama, their lordships would find a dispatch of the noble earl of the 29th of October, just six days before the dispatch of the 4th of November, in which the instructions to the governor were contained. The noble earl mentioned various matters of complaint under three different heads, and among others the case of the Tuscaloosa, and how it had been dealt with by the authorities at the Cape. He said:

"As regards the Tuscaloosa, although her Majesty's government would have approved the British authorities at the Cape if they had adopted towards that vessel a course different from that which was adopted, yet the question as to the manner in which a vessel under such circumstances should, according to the tenor of her Majesty's orders, be dealt with, was one not altogether free from uncertainty. Nevertheless, instructions will be sent to the British authorities at the Cape for their guidance in the event of a similar case occurring hereafter, and her Majesty's government hope that under those instructions nothing will for the future happen to admit of a question being raised as to her Majesty's orders having been strictly carried out."—*Correspondence*, No. 1, (1864,) p. 43.

Thus, then, on the 29th of October, after a rather menacing correspondence on the part of the American minister, her Majesty's government promised that instructions should be issued, and they were issued six days afterwards, sanctioning and adopting the extraordinary claims made by the American minister. The noble duke gave the following instruction:

"With regard to the vessel called the Tuscaloosa, I am advised that this vessel did not lose the character of a prize captured by the Alabama, merely because she was, at the time of her being brought within British waters, armed with two small rifled guns, in charge of an officer, and manned with a crew of ten men from the Alabama, and used as a tender to that vessel under the authority of Captain Semmes. It would appear that the Tuscaloosa is a bark of 500 tons, captured by the Alabama off the coast of Brazil on the 21st of June last, and brought into Simon's Bay on or before the 7th of August, with her original cargo of wool (itself, as well as the vessel, prize) still on board, and with nothing to give her a warlike character (so far as is stated in the papers before me) except the circumstances already noticed. Whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent government, without being first brought *infra præsidia*, or condemned by a court of prize, the character of prize, within the meaning of her Majesty's orders, would or would not be merged in that of a national ship of war, I am not called upon to explain. It is enough to say that the citation from Mr. Wheaton's book by your attorney general does not appear to me to have any direct bearing upon the question."—*Correspondence*, No. 6, (1864,) p. 18.

And then the noble duke concluded as follows:

"The question remains, what course ought to have been taken by the authorities of the Cape—1st, in order to ascertain whether this vessel was, as alleged by the United States consul, an uncondemned prize, brought within British waters in violation of her Majesty's neutrality; and 2d, what ought to have been done if such had appeared to be really the fact. I think that the allegations of the United States consul ought to have been brought to the knowledge of Captain Semmes while the Tuscaloosa was still within British waters, and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa's papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of her Majesty's orders, made for the purpose of maintaining her neutrality, I consider that the mode of proceeding in such circumstances most consistent with her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by her captors, and to retain that vessel under her Majesty's control and jurisdiction until properly reclaimed by her original owners." (p. 19.)

These were the views of her Majesty's government, and the dispatch having been sent to the governor, he found himself in a situation of great embarrassment. He required further explanation, with respect to the mode in which he was to act, and he wrote on the 19th of December as follows:

"I think it right to take advantage of the first opportunity for representing to your grace the state of uncertainty in which I am placed by the receipt of this communication, and for soliciting such further explanations as may prevent my again falling into error on these matters."

He added:

"Your grace intimates that the citation from Wheaton by the acting attorney general does not appear to have any direct bearing upon the question. You will assuredly

believe that it is not from any want of respect for your opinion, but solely from a desire to avoid future error, that I confess my inability to understand this intimation, or, in the absence of instructions on that head, to see in what direction I am to look for the law bearing on the subject. The paragraph cited made no distinction between a vessel with cargo and a vessel without cargo; and your grace leaves me in ignorance whether her character would have been changed if Captain Semmes had got rid of the cargo before claiming for her admission as a ship of war. Certainly, acts have been done by him which, according to Wheaton, constituted a 'setting forth as a vessel of war.'—*Correspondence*, No. 6, (1864,) p. 19.

To add to his embarrassments, the *Tuscaloosa*, after an absence of four months, returned on the 26th of December to Simon's Bay. Admiral Sir Baldwin Walker wrote to the governor stating the course which in his opinion ought to be pursued:

"As it appears that this vessel, the *Tuscaloosa*, late federal ship *Conrad*, is an unconquered prize, brought into British waters in violation of her Majesty's orders, made for the purpose of maintaining her neutrality, I therefore consider that she ought to be detained with the view of her being reclaimed by her original owners, in accordance with the opinion of the law officers of the Crown forwarded for my guidance, the copy of which I have already transmitted to you." (p. 21.)

He could not pass over the extraordinary departure from the usual course which this letter disclosed. They had been told in that House over and over again that the opinions of the law officers of the Crown were confidential, and the government had repeatedly refused to lay them upon the table. The noble earl, (Earl Russell,) when asked in the House when it was that the attorney general had changed his opinion on the subject of the steam rams, said,

"I consider the opinion of the attorney general to be a privileged communication, and I decline to answer the question."

Yet it now appeared that these confidential communications were sent out as instructions to Admiral Sir Baldwin Walker, and by him communicated to the captains of the fleet. If they obtained such publicity as that, he (Lord Chelmsford) could see no reason for withholding them from the House of Lords or the House of Commons. The governor of the colony agreed with Sir Baldwin Walker that, in conformity with instructions furnished by the government on the 4th of November, the vessel ought to be detained for the purpose of being delivered up to her original owners; and, accordingly, she was seized by the colonial authorities. The governor offered her to the United States consul, who most fortunately appeared to have some scruples about receiving her. The consul said:-

"I can institute a proceeding *in rem* where the rights of property of fellow-citizens are concerned without a special procuration from those for whose benefit I act, but cannot receive actual restitution of the *res* in controversy without a special authority."

If the consul had not had these scruples, there would have been a little bill to pay at the present moment to the captors. The stores and ammunition were taken out and deposited in the dock-yard, but not without an indignant protest on the part of the lieutenant of the confederate navy who was in command of the *Tuscaloosa*. He said:

"In August last the *Tuscaloosa* arrived in Simon's Bay. She was not only recognized in the character which she lawfully claimed and still claims to be, namely, a commissioned ship of war belonging to a belligerent power, but was allowed to remain in the harbor for the period of seven days, taking in supplies and effecting repairs with the full knowledge and sanction of the authorities. No intimation was given that she was regarded merely in the light of an ordinary prize, or that she was considered to be violating the laws of neutrality. Nor, when she notoriously left for a cruise on active service, was any intimation whatever conveyed that on her return to the port of a friendly power, where she had been received as a man-of-war, she would be regarded as a prize, as a violator of the Queen's proclamation of neutrality, and consequently liable to seizure. Misled by the conduct of her Majesty's government, I returned to Simon's Bay on the 26th instant, in very urgent want of repairs and supplies; to my surprise the *Tuscaloosa* is now no longer considered as a man-of-war, and she has, by your orders, as I learn, been seized for the purpose of being handed over to the person who claims her on behalf of her late owners. The character of the vessel, namely, that of a lawful commissioned man-of-war of the Confederate States of America, has not been altered since her first arrival in Simon's Bay, and she, having been once fully recognized by the British authorities in command in this colony, and no notice or warning of change of opinion or of friendly feeling having been communicated by public notification or otherwise, I was entitled to expect to be again permitted to enter Simon's Bay without molestation. In perfect good faith I returned to Simon's Bay for mere necessities, and in all honor and good faith in return I should, on change of opinion or of policy on the part of the British authorities, have been desired to leave the port again. But, by the course of proceedings taken, I have been (supposing the view now taken by your excellency's government to be correct) first misled and next entrapped. My position, and the character of my ship, will most certainly be vindicated by my govern-

ment. I am powerless to resist the affront offered to the Confederate States of America by your excellency's conduct and proceedings."—*Correspondence*, No. 6, (1864,) p. 23.

In due course the governor communicated to the secretary of state for colonial affairs, the seizure of the *Tuscaloosa*. In a dispatch dated the 11th of January, he said:

"I very much regret having to acquaint your grace that the confederate prize vessel the *Tuscaloosa* has again entered Simon's Bay, and that the naval commander-in-chief and myself have come to the conclusion that, in obedience to the orders transmitted to his excellency by the admiralty, and to me by your grace's dispatch of the 4th November last, it was our duty to take possession of the vessel, and to hold her until properly claimed by her original owners. The admiral therefore sent an officer with a party of men from the flag-ship to take charge of her, and to deliver to her commander a letter in explanation of the act. Copies of his protest, addressed to me, and of my reply, are enclosed. He not unnaturally complains of having been now seized after he had, on the previous occasion, been recognized as a ship of war. But this is manifestly nothing more than the inevitable result of the overruling by her Majesty's government of the conclusion arrived at on the previous occasion by its subordinate officer."—*Correspondence*, No. 6, (1864,) p. 25.

By a dispatch dated the 4th of March, the governor was directed by the noble duke, the secretary of state, to deliver back the *Tuscaloosa* to the lieutenant who commanded her, the reasons for so doing being promised to be communicated to him in a subsequent dispatch. Now, the instructions sent out on the 4th of November were either right or wrong. If they were wrong, her Majesty's government ought not to have been satisfied by merely ordering that the vessel should be restored—they need have felt no humiliation in admitting their error and making an apology, and it would further have been a generous act to which the confederates are entirely unaccustomed. If the instructions were right, let their lordships see the position in which the government placed itself by the order to deliver back the vessel. By the seizure of the vessel under the instructions the original owners had been remitted to their rights, and the government ought not to have ordered her to be given back to the confederates without the consent of the owners. The fact was, her Majesty's government did not like to admit they were wrong, and could not assert that they were right; and, therefore, in the dispatch communicating the reasons why the *Tuscaloosa* was to be restored they took a course which was always an indication of weakness—they made the *Tuscaloosa* a special case. The announcement was conveyed in these terms:

"I have now to explain that this decision was not founded on any general principle respecting the treatment of prizes captured by the cruisers of either belligerent, but on the peculiar circumstances of the case. The *Tuscaloosa* was allowed to enter the port of Cape Town and to depart, the instructions of the 4th of November not having arrived at the Cape before her departure. The captain of the *Alabama* was thus entitled to assume that he might equally bring her a second time into the same harbor, and it becomes unnecessary to discuss whether, on her return to the Cape, the *Tuscaloosa* still retained the character of a prize, or whether she had lost that character and had assumed that of an armed tender to the *Alabama*, and whether that new character, if properly established and admitted, would have entitled her to the same privilege of admission which might be accorded to her captor, the *Alabama*."—*Correspondence*, No. 6, (1864,) p. 31.

So ended the history of the *Tuscaloosa*. That the government were wrong in seizing that vessel, and that they were right in restoring her, he was willing to concede; and if that were an individual case in which no general principle was involved he should dismiss it without any further observations. But the instructions issued on the 4th of November had never to his knowledge been recalled, their impropriety had never been acknowledged; and, therefore, he desired to point out what in his view formed the error and illegality of those instructions. He said, and he challenged contradiction of the statement, that no writer on international law had laid down the doctrine that a neutral which had prevented a belligerent from bringing prizes into her ports had any right whatever, if that prohibition was disregarded, to seize the prize and to restore her to her original owners. All that the neutral had a right to do in such a case was to order the vessel away; and if she refused to go, the neutral might use force for the purpose of urging her departure. By the rules of international law the moment a capture takes place the property, as between belligerents, is vested in the captors, and therefore a neutral dealing with the property in the way proposed by her Majesty's government would be taking the property of one of the belligerents and giving it to the other. A neutral has no right whatever to enter into the consideration of the validity of prizes brought into its waters. The capture may have been invalid and illegal, but the neutral has no right to raise the question. There were only certain cases in which the neutral might and ought to inquire, and those were exceptions very strongly establishing the rule. Where a vessel is seized by a belligerent within neutral waters, a violation of neutrality takes place, and it is not only the right, but the duty, of the neutral to restore the vessel to its original owners, because the captures are illegal and void, and

there never was a moment at which the vessel was legally a prize. But that rule certainly could not be made to apply to the case of the *Tuscaloosa*, which, after a lapse of six months from the time of her capture, came into neutral waters. So it is held that a neutral may exercise the authority of seizing prizes brought into its waters, and of returning them where the property of its subjects has been illegally captured and afterwards brought into its ports; the extraordinary reason upon which his right is founded being that it is compensation for the asylum afforded. But he repeated that no authority was to be found for the proposition that neutrals were entitled to deal with prizes brought into their waters in the manner in which her Majesty's government had dealt with the *Tuscaloosa*. It would, no doubt, be urged by the government that the bringing of a prize into neutral waters, contrary to the prohibition contained in the proclamation, was a violation of neutrality. But with this view, taking the plain meaning of the words "violation of neutrality," he could not agree. He contended that the instructions issued by her Majesty's government were wholly improper and illegal; he presumed they had not been confined to the governor of the Cape of Good Hope, but had been sent around to all our colonial possessions. At the very moment when he was addressing their lordships it might be that prizes had been seized in some of our colonies and delivered up by the different local governors either to the confederates or the federals. If the prize improperly seized under the instructions of the government belonged to the federals, he could anticipate fully well what would happen—strong remonstrances and high-toned menaces on one side, submission, apology, restoration, and, perhaps, compensation, on the other. Should the prize taken be from the confederates, the remonstrances might be equally loud, but they would not be so much regarded. Restoration, as shown by the present case, might be necessary, but it would be restoration unaccompanied by any apology; it would be mere restoration, and nothing more. Whichever alternative happened, the position of the British nation would not be very dignified. He trusted that in the reply about to be made by her Majesty's government he should hear either that the propositions which he had ventured to lay down were capable of refutation, or that the instructions issued by the government had been recalled or were about to be recalled. In either event, he should feel that he had not provoked the discussion in vain.

EARL RUSSELL. My lords, the noble and learned lord has, no doubt, brought a very serious question under your lordship's consideration. At the same time, it must be recollected that all these applications of the principles of international law to the contest between the federals and so-styled Confederate States have to be made under very exceptional circumstances. It has been usual for a power carrying on war upon the seas to possess ports of its own in which vessels are built, equipped, and fitted, and from which they issue, to which they bring their prizes, and in which those prizes, when brought before a court, are either condemned or restored. But it so happens that in this conflict the Confederate States have no ports except those of the Mersey and the Clyde, from which they fit out ships to cruise against the federals; and having no ports to which to bring their prizes, they are obliged to burn them upon the high seas. It is natural, under these circumstances, that the confederate officers and confederate authorities should somewhat resent the orders of her Majesty, of which the noble and learned lord was pleased to approve, and should endeavor to evade their operation. These orders, as your lordships are aware, were that no prizes made by either belligerent should be brought into the ports of the United Kingdom, or of her Majesty's possessions abroad. It thus became very difficult for the confederates to determine what they should do with their prizes. The *Tuscaloosa*, so called, was brought into the port of the Cape of Good Hope. The noble and learned lord passed over with little more than a depreciatory notice the reports of the naval officers upon that station. For my part, I have found that the officers of her Majesty's naval service, being bound to apply the law of nations according to the rules with which they are furnished, and the books which they have in their possession, have, generally speaking, applied them with remarkable sense and discretion, and in a spirit of equal firmness and moderation, showing themselves disposed always to maintain the rights of the British crown and the honor of the British flag, but at the same time to do nothing for the purpose of irritation or mere vexatious interference. Such has been the conduct of Sir Alexander Milne, who has for four years directed the operations of her Majesty's forces on the coast of America in such a manner as, while securing the approbation of his own government, to conciliate the regard of all with whom he has had to deal, and particularly of the government of the United States. And such, I will venture to say, was the conduct of Sir Baldwin Walker. Now what had he to consider in this case? It struck Sir Baldwin Walker, as I think it would have struck any one else, that if confederate ships of war were to be allowed to send in prizes with their cargo on board, and by putting one or two guns and a confederate officer on board to call them ships of war, the policy of her Majesty's government would be defeated, and her Majesty's proclamation would become null and void. They would send in their prizes with a couple of guns and an officer, who, having sold first the cargo and then the vessel, would return to his ship; and this process might be repeated with any number of prizes. Thus her Majesty's neutrality would

become a mere name. Sir Baldwin Walker has expressed this in some passages to which the noble and learned lord did not refer, but which I will read to your lordships. In his letter of the 19th of August he says:

"On the 8th of August the tender *Tuscaloosa*, a sailing bark, arrived in Simon's Bay, and the boarding officer having reported to me that her original cargo of wool was still on board, I felt that there were grounds for doubting her real character, and again called the governor's attention to this circumstance. My letter and his reply are annexed. And I would here beg to submit to their lordships' notice that this power of a captain of a ship of war to constitute every prize he may take a 'tender' appears to me to be likely to lead to abuse and evasion of the laws of strict neutrality, by being used as a means for bringing prizes into neutral ports for disposal of their cargoes and secret arrangements—which arrangements, it must be seen, could afterward be easily carried out at isolated places."—*Correspondence*, No. 6, (1864,) p. 1.

And in another letter:

"The admission of this vessel into port will, I fear, open the door for numbers of vessels captured under similar circumstances, being denominated tenders, with a view to avoid the prohibition contained in the Queen's instructions; and I would observe that the vessel *Sea Bride*, captured by the *Alabama* off Table Bay a few days since, or all other prizes, might be in like manner styled tenders, making the prohibition entirely null and void." (p. 3.)

With reference to that, the noble and learned lord expressed no opinion. He did not tell us whether, under the law of nations, it is permissible for the captain of a man-of-war to make any number of his prizes into tenders or vessels of war, and send them into neutral ports, and thus evade a proclamation of neutrality. Sir Baldwin Walker further says:

"Now, this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes, and her armament and the number of her crew are quite insufficient for any services other than those of slight defense. Viewing all the circumstances of the case, they afford room for the supposition that the vessel is styled a 'tender' with the object of avoiding the prohibition against her entrance as a prize into our ports, where, if the captors wished, arrangements could be made for the disposal of her valuable cargo, the transhipment of which, your excellency will not fail to see, might be readily effected on any part of the coast beyond the limits of this colony." (p. 3.)

The question was whether it was to be permitted that prizes should be sent into our courts under the disguise of being vessels of war, and thus her Majesty's proclamation should be entirely defeated. The attorney general of the colony thought this was perfectly permissible, and that it could not be avoided or counteracted in any way, and, in support of that opinion, he quoted a paragraph of Wheaton. The law officers in this country are of opinion that that paragraph does not apply, because it was written with reference to a different subject, namely, the prize acts. In that paragraph it is said, and very truly and justly said, that although in certain cases merchant ships which have been recaptured must be restored to their owners, yet when a vessel has taken the character of a man-of-war, if the captain of a British man-of-war has to fight such a vessel, and has to use his warlike forces to capture her, she then loses the character of a merchant ship, and the naval officers are fairly entitled to consider her as a prize. That principle does not seem to apply to the present case. This, then, was the case with which the government had to deal, having the opinion of the attorney general of the colony on the one side, and that of Sir Baldwin Walker on the other. The opinion of Sir Baldwin Walker is, clearly, the opinion of common sense, and the law officers say that it is well founded in law, and that it is not permissible to put a few guns into a prize, retaining her cargo on board, and send her into a neutral port to sell it. My noble friend, (the Duke of Newcastle,) who, with the noble and learned lord, I regret, has been compelled by ill health to resign his office, or we should have heard him vindicate his own dispatch—my noble friend, the late secretary for the colonies, followed the opinion of the law officers. Their opinion was, that this vessel, not being in fact a vessel of war, but being a prize, ought not to have been admitted to the Cape as a vessel of war. But it then became a question—and a very serious question I admit it to be—whether she ought to have been warned off in the first instance, or whether she should be taken possession of and restored to her owners. The noble and learned lord seemed at first to say that there was no such thing as taking possession of the prize of a belligerent; that when it once became a prize it was out of the power and jurisdiction of the authorities of another country; but he afterward very properly and justly said that there were certain cases in which the courts have held, and authorities have concurred with them, that vessels can be restored to their owners if they are not properly prizes, and he avoided the contradiction into which he had fallen by saying that, in that case, they never had been prizes. That, however, does not get over the contradiction of the general *dictum* which he had laid down, because it is certainly true that there are cases decided by the courts of the United States in which vessels have come in as vessels of war, and nevertheless, the courts have, after argument, ordered them to be

restored to their owners, and they have been so restored. Undoubtedly the ground of their being restored has been that the vessel which took them had been originally fitted out and manned by the United States themselves, and, therefore, they were bound to restore those vessels and their cargoes to the owners; but whatever the ground may be, it is quite clear that there are cases in which, according to principles which the United States admit, the vessels ought to be restored, and here is a passage from Wheaton on the subject. He says:

"In such cases the judicial tribunals of the neutral state have authority to determine the validity of the capture thus made, and to vindicate its neutrality by restoring the property of its own subjects, or of other states at amity with the original owners."

Therefore there are cases in which a vessel may be considered as a prize unlawfully taken, and it may be restored to the owners. The Duke of Newcastle, at the end of his dispatch, said that the real character of the Tuscaloosa ought to have been inquired into; that Captain Semmes should have been called upon to produce her papers; and he concluded:

"If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of her Majesty's orders made for the purpose of maintaining her neutrality, I consider that the mode of proceeding in such circumstances most consistent with her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under her Majesty's control and jurisdiction until properly reclaimed by her original owners." (See p. 19.)

Now, I must say, as the general tenor of the dispatch is founded on the opinion of the law officers of the Crown, that the Duke of Newcastle, in this instance, as I would have done in his place, went somewhat beyond that opinion. The law officers said: "It is worthy of serious consideration," meaning that it was a point evidently deserving of being maturely weighed. The Duke of Newcastle, however, clearly saw that it was a point which he must decide for the time, and that his instructions to the governor must be explicit. I am, at the same time, ready to admit that this is a question which turns on a nice point of international law, arising under circumstances which are quite new, owing to the fact that the Confederate States have no port to which they can send their prizes. The point, therefore, is open to further consideration, whether the proper treatment of such vessels should not be to warn them off rather than to allow them to remain in port. But to say that the question can be decided only in the courts of the captors is, I think, altogether an error. It is impossible to say, "Here is a vessel with a cargo evidently a prize; but no action shall be taken with regard to that vessel until some prize court, at Richmond or Charleston, shall have pronounced an opinion." The law officers of the Crown held, and most rightly, that these are questions to be decided in her Majesty's courts, and not in the courts of the captors. The noble and learned lord ended by saying, that if this had happened in the case of a vessel captured by the federals, there would have been strong and angry remonstrances on their part, and we should have made an ample apology. Now, in my opinion, we have heard enough of this kind of allegation. If the noble and learned lord alluded to the course her Majesty's government took with respect to the Trent, in which our honor was at stake, and we acted so mean a part and played so truckling a part that the Americans had it all their own way, and kept their prisoners; and if, the other day, when an American vessel committed a breach of neutrality in British waters, and her Majesty's government were satisfied to allow that violation to take place and did not ask for an apology, then the remarks might be true. But I must tell the noble and learned lord that there have been many cases pending in which very loud complaints were made in this House when the question was not decided; but immediately there has been any concession to justice on the part of the United States, the noble lords opposite are so mortified that the British government should have justice done them by the American government, and so mortified with the United States for doing them that justice, that there is a total silence on their part. We were told, early in the session, that the case of the Saxon was a violation of neutrality, and that a murder had been committed, and that the officer ought to be tried. The case was brought before the United States court; the Saxon was given up, and the further question with regard to damages was pending; but, in the main, justice had been done to the owner. Then a complaint was made that the accused ought not to be tried by a court-martial; it was pointed out that, in the way in which the accusation was drawn, a fair trial could not take place. The United States government agreed to amend the indictment, and the question is still under consideration. I really think, when this is done, it would be but decent on the part of noble lords opposite to admit that the United States government were ready to do justice when a fair case was pointed out to them. But I own that, in all these cases, her Majesty's government ought not to take one side or the other, and that we ought not to be, as the noble lords opposite are, animated by any partiality to the federal or Confederate States, but ought to do justice between both.

LORD KINGSDOWN said, that two entirely distinct questions had been raised in the

dispatches of Sir Baldwin Walker; one whether in point of law the prize ship had been converted from a prize into a ship of war, the other supposing her to remain a prize; what ought to be done with her? With the first question their lordships at present were not concerned; the other, if it were a question at all, was one of the most important that had arisen out of the application of the principles of international law. The proposition of Sir Baldwin Walker was, that a prize remained the property of the original owners until it had been condemned in a court of legal competency, namely, a prize court; and that any one into whose hands it might afterward come must hold it for the original owners. That, so far as he (Lord Kingsdown) understood, was also the view taken by the government. Now, it was a great relief to him to hear that the Duke of Newcastle, in his dispatch on the subject, had gone beyond the opinion of the law officers of the Crown. It was not the first time that he (Lord Kingsdown) had expressed his high opinion of those distinguished persons, and it was in a great measure owing to this opinion that he, and noble lords who sat on the same side of the House, had abstained from interfering in those nice questions and angry discussions which had arisen between her Majesty's government and the government of the United States. The attacks which had been made on the government policy had proceeded not from that side of the House but from the other. He (Lord Kingsdown) must say that a grave mistake had been fallen into on this occasion. It was very unfortunate that the copy of *Wheaton* which had been referred to was an old edition in which the passage was found that the dispatch quoted; but in a later edition of *Wheaton* the doctrine was more fully stated and explained. The rule requiring the condemnation in a prize court in order to change the property, had nothing to do with the rights as between belligerents. When one belligerent had captured and taken possession of the vessel of another, it became his property as if he were the original owner, as completely as if it had been condemned by all the prize courts in Europe. The law upon this subject was very clearly and accurately stated by Dr. Twiss in his recent *Treatise on the Law of Nations*, vol. 2, p. 330. He states distinctly that the personal obligations of a captor to bring his captures into port for inquiry and adjudication is founded on the instructions that he has received from his own government; that this rule is for the benefit of neutrals and not of belligerents, who have no *locus standi* in a prize court, and cannot claim a right that their property upon capture by a belligerent should be taken into port for adjudication; that capture alone divests an enemy of his property *jure belli*. Let their lordships observe what had been done in the present case. Her Majesty had forbidden armed vessels with their prizes to come into her ports. According to law, if a ship of war with her prize entered a British port she could be ordered away, but in what way did the British government obtain the right to take possession of this ship? They might have sent her away upon the ground that she had come in contrary to the orders in council; but how did she become liable to seizure and confiscation by the British government? Even supposing it could be said that the violation of the municipal laws of Great Britain entitled the British government to seize her and confiscate her to the Crown, their lordships would observe that the conduct pursued by our authorities was based upon an entirely different ground. Their argument was that the Tuscaloosa having come under their control they were bound by law to restore her to her original owner. But beyond all doubt the original owner had lost his property, for the ship had never been recaptured. If the governor had seized the ship for violation of our municipal laws, we were entitled to confiscate it, which he entirely denied. The original owner would have had no possible claim, unless the Queen had thought fit to make a present to him. The cases in which, and the purposes for which, adjudication was required were very distinctly stated by Dr. Twiss in a passage of his work at page 340:

"Every capture of a vessel is complete, as between the belligerents, when the surrender has taken place, and the *spes recuperandi* is gone; but as between the original owner of a vessel and a third party in respect of the *jus postliminii*, if the vessel should be recaptured, or as between the captor of a vessel and a third party in respect of the right of the former to dispose of the vessel in favor of the latter by way of sale, positive rules have been introduced, partly from equity to extend the *jus postliminii* in favor of the original owner, partly from policy to prevent any irregular conversion of property before it has been ascertained to have been lawfully acquired *jure belli*."

The Confederate States could not obtain adjudication in their own courts, for, by reason of what was recognized by Europe as the blockade, they had no means of carrying their vessels in safety into their own ports. Under such circumstances, Lord Stowell had, in the case of the *Felicity*, laid it down that it was not only the right but the duty of a belligerent to destroy the enemy's property. He said that in such a case—

"Nothing is left to the belligerent vessel but to destroy the vessel which she has taken, for she cannot consistently with her general duty to her own country, or, indeed, under its express injunctions, permit enemy's property to sail away unmolested. If it should be impossible to bring her in, her next duty is to destroy enemy's property."

He did not blame the officers of the Cape. It was not to be expected that they could be familiar with the law upon such subjects. But it was necessary to point out the

mistake which had been made, as we might otherwise be involved in serious difficulties. Fortunately in this case the American consul had disclaimed any interference with the ship. If the government had held it and a claimant had come forward, how was the right to be determined? What courts had any jurisdiction? He was satisfied that the opinions of the law officers had been misunderstood; and for his part, he should not be unwilling to leave it to them to say whether the law, as it had been laid down in the dispatch by the government, could be maintained.

The LORD CHANCELLOR. My lords, I am always unwilling, in a matter of this kind, to take part in the debate, because no noble and learned lord who is in the habit of sitting here on appeals can feel certain that some question on which he gives his opinion in the House in his deliberative character may not come before him in his judicial capacity, when he may be considerably embarrassed by his speech. It is in that spirit of caution that I rise now, because my noble and learned friend who has just spoken (Lord Kingsdown) has expressed opinions which, if they went forth to the world on his authority and in no respect questioned or modified, might be received as doctrines which had commanded the assent of your lordships. I should have been glad if my noble and learned friend had examined the cases which have been cited, instead of being content with the language of the text written. Let me beg him to observe the case of the *Actæon*. [LORD KINGSDOWN. It was the *Endymion* I referred to.] Then that is a still stronger case. Sir William Scott says:

"There was no doubt that the *Endymion* had a full right to inflict that (that is, the burning of the vessel) if any grave call of public service required it. Regularly, a captor is bound by the law of his own country, conforming to the general law of nations, to bring in for adjudication, in order that it may be ascertained whether it be enemy's property; and that mistakes may not be committed by captors in the eager pursuit of gain, by which injustice may be done to neutral subjects, and national quarrels produced with the foreign states to which they belong."

Thus, the very case on which my noble and learned friend rested his argument would, if he had examined it, have led him to the conclusion that the old rule by which the object seized became at once the property of the captor has been qualified by the more merciful usage of civilized nations, and that there is an obligation to obtain condemnation; and Sir William Scott distinctly explains that this law has been established in order to place some control upon captors, that, in pursuit of gain, they might not be led to commit injustice. The case of the *Endymion* was this: She was on a cruise in search of the American frigate *President*, and in the course of her cruise she captured an American merchantman. She was, however, so confined by her instructions to continue cruising that she could not bring her prize into court, but burnt it at sea. Afterwards a claim was brought by the owner of the prize for damages in consequence of its destruction, and Sir William Scott held that the captor was excused from the obligation of bringing in the prize for adjudication by reason of the express and stringent nature of his instructions, which did not allow him to quit the sea. But there is not only that opinion. My noble and learned friend will find that Lord Mansfield, the greatest authority in English law, held the same view. I would also direct his attention to the remarks which Lord Stowell made in the case of the *Flad Oyen*. (1 Rob., page 135.) It was the case of a ship taken by a French privateer, and carried into a port in Norway, where she underwent a sort of process which terminated in a sentence of condemnation pronounced by the French consul. It was therefore a case of capture by a belligerent. Lord Stowell, in that case, said:

"But another question has arisen in this case upon which a great deal of argument has been employed—namely, whether the sentence of condemnation which was pronounced by the French consul is of such legal authority as to transfer the vessel, supposing the purchase to have been *bona fide* made? * * * It has frequently been said that it is the peculiar doctrine of the law of England to require a sentence of condemnation, as necessary to transfer the property of prize, and that, according to the practice of some nations, twenty-four hours, and, according to the practice of others, bringing *infra præsidia*, is authority enough to convert the prize. I take that to be not quite correct, for I apprehend that, by the general practice of the law of nations, a sentence of condemnation is at present deemed generally necessary, and that a neutral purchaser in Europe, during war, does look to the legal sentence of condemnation as one of the title-deeds of the ship, if he buys a prize vessel. I believe there is no instance in which a man, having purchased a prize vessel of a belligerent, has thought himself quite secure in making that purchase, merely because the ship has been in the enemy's possession twenty-four hours, or carried *infra præsidia*."

Without saying that there may not be contradictory passages found in a great variety of writers, I think the passages I have quoted are sufficient to show that property is not, as a rule, transferred by the mere fact of capture, and the reason why the old rule has thus been qualified by the general practice of nations is, as stated by Sir William Scott, the necessity of putting some limitation on the act of the captor. Nothing in the world can illustrate that so strongly as the case of the *Endymion*, which has been referred to, where the captor was not held to be justified in destroying his prize, except

by reason of the urgency of the service on which he was engaged, because otherwise he would have been held to be under an obligation to bring the ship to a court for adjudication. Hence this question is, in the language of the law officers, "worthy of very serious consideration." There may be no instance precisely parallel, but at the same time the law officers were perfectly justified in the opinion they gave that the matter required serious consideration. Serious consideration has been given to it, and the result will be embodied in clear and definite instructions which will be generally circulated throughout all our colonial possessions. The only point in which the dispatch in question is open to challenge is that it speaks of the course taken as being deemed the best, instead of saying that the question deserved very serious consideration; but it should be borne in mind that the dispatch was written in regard to a past transaction, and that it did not lay down a rule, but merely described the application which had already been made of one.

The EARL OF HARDWICKE said he had looked carefully through the history of the American war, and he had found a case which occurred to him to bear precisely upon the one under discussion, with this exception, that the captor was not a neutral but a belligerent. The case was this: A United States frigate, on the 14th of March, 1813, having previously captured the Nottingham, and taken £11,000 in specie out of her, proceeded to cruise on the coast of Chili, and during that cruise she captured twelve whalers; but did she send them to the United States for adjudication? She did not, for they were all recaptured by the English. But there was one of them that fitted this case, and that was the case of the Georgiana. Captain Porter, thinking her a useful vessel, armed her with sixteen guns and put a crew on board of her, and in that condition she was captured. She had never been condemned in any of the United States prize courts, but on her being recaptured by one of our ships she was brought into our prize courts; and after an elaborate argument, which he had no doubt the present noble and learned lord on the woolsack would respect, Sir William Scott gave judgment in favor of her original captors, and she was accordingly handed over.

LORD CHELMSFORD, in reply, said he had understood the noble and learned lord on the woolsack to say there had been a modification of the instructions, and, if so, he thought their lordships had a right to know in what respect they had been modified.

The LORD CHANCELLOR explained he was sorry he had been misunderstood. What he said was that new instructions were under consideration with a view of being sent out.

[From Hansard's Parliamentary Debates, vol. 174, pages 1777-1859.]

HOUSE OF COMMONS, April 28, 1864.

UNITED STATES—THE SEIZURE OF THE TUSCALOOSA—RESOLUTION.

Mr. PEACOCKE rose to call attention to the subject of which he had given notice, and thought when the house was made acquainted with the facts, that they would agree with him that it was one of the most bungling transactions that any government was ever engaged in. It would appear that the confederate vessel of war the Alabama, under the command of Captain Semmes, captured off the coast of Brazil a federal bark, the Conrad, which he armed and converted into a tender to the Alabama under the confederate flag. Some weeks afterward, Captain Semmes had occasion to proceed to the vicinity of the Cape, accompanied by the tender, then called the Tuscaloosa, and he informed the authorities at the Cape that his vessel needed some repairs, and that the Tuscaloosa was a tender to his ship, cruising off the coast. When that information reached the authorities at the Cape, there began a correspondence, to which he should have to call attention. In the first place, he must observe that a valuable and esteemed friend—no less a person than Sir Baldwin Walker—was the admiral on the station, and it would be a consolation to that gallant officer's admirers to know that although so distant from this country he still displayed the same amount of party zeal which distinguished him at home. Sir Baldwin Walker immediately wrote to the governor of the Cape to know how the Tuscaloosa was to be treated, and he was informed that in the opinion of the attorney general of the colony that vessel must be regarded as a tender and not as a prize. But Sir Baldwin Walker was not satisfied with this opinion of the attorney general, he returned to the charge, and again asked the governor how the vessel should be treated, and then he was referred to Wheaton to show that if certain conditions were complied with, that if the vessel had a commission of war, or was in the command of an officer of the confederate navy, she must be treated as a tender and not as a prize. That reply reduced Sir Baldwin Walker to submission, but not to silence. He was determined that if the attorney general had the best of it at the Cape, he would have the best of it at home; so he wrote home at once to the admiralty a dispatch in which he said:

"I would here beg to submit to their lordships' notice, that the power of a captain

of a ship of war to constitute every prize he may take a 'tender' appears likely to me to lead to abuse and evasion of the laws of strict neutrality, by being used as a means of bringing prizes into neutral ports, for disposal of their cargoes and secret arrangements."—*Correspondence, North America*, No. 6, (1864,) p. 1.

Now, what was this opinion of Sir Baldwin Walker but an imputation upon that of the attorney general? nor was it consoling to think, when so many delicate and difficult questions were likely to arise there, that we had a second Commodore Wilkes commanding at that station. These facts were duly reported by Sir Philip Wodehouse to the Duke of Newcastle, who also forwarded the claim which had been made by the United States consul at the Cape that the Tuscaloosa should be given up. He would read to the House the grounds upon which the claim was made by Mr. Graham:

"I am well aware that your government has conceded to the so-called Confederate States the rights of belligerents, and is thereby bound to respect Captain Semmes's commission; but having refused to recognize the 'confederacy' as a nation, and having excluded his captures from all the ports of the British empire, the captures necessarily revert to their real owners, and are forfeited by Captain Semmes as soon as they enter a British port."—*Correspondence*, No. 6, (1864,) p. 11.

Now, as her Majesty's government had thought fit to indorse that claim, he would ask whether her Majesty's government acquiesced in the reasons which were urged in its favor. Meanwhile, Mr. Adams had not been idle. He brought a good deal of pressure to bear upon Lord John Russell, who wrote a dispatch in compliance with his demands.

Now, the House will observe that there was at least one pleasing feature in the dispatch, because it showed that there was, at all events, one country to which her Majesty's secretary for foreign affairs could be courteous or even submissive. He could picture himself the surprise with which the ambassadors of Russia, Austria, Prussia, and even France would have received a dispatch couched in such language; and he would venture to assert that if such a dispatch were addressed to any of the smaller powers of Europe, such as Portugal or Greece, the document would be looked upon as a hoax, and the signature as a forgery. These were not mere idle words upon the part of Lord Russell. The promise was fulfilled to the letter, and in consequence of this promise a dispatch was sent out from the colonial office to Sir Philip Wodehouse, the governor of the Cape, which was one of the most extraordinary documents he had ever read. He believed he was stating an undoubted fact when he asserted that although the dispatch was signed by the Duke of Newcastle, it was no more than a nobleman's than it was his own, the colonial office acting merely as an official channel for the transmission of the dispatch from the foreign office. He would begin by calling attention to the 7th paragraph:

"Whether, in the case of a vessel duly commissioned as a ship of war, after being made a prize by a belligerent government, without being first brought *infra præsidia*, or condemned by a court of prize, the character of prize, within the meaning of her Majesty's orders, would or would not be merged in that of a national ship of war, I am not called upon to explain."

He called upon to explain! Why, this is precisely one of those questions upon which it was his duty to give the most clear and positive instructions. The dispatch went on to say:

"I think it right to observe that the third reason alleged by the attorney general for his opinion assumes (though the fact had not been made the subject of any inquiry) that 'no means existed for determining whether the ship had or had not been judicially condemned in a court of competent jurisdiction,' and the proposition that, 'admitting her to have been captured by a ship of war of the Confederate States, she was entitled to refer her Majesty's government, in case of any dispute, to the court of her States, in order to satisfy it as to her real character.' This assumption, however, is not consistent with her Majesty's undoubted right to determine within her own territory whether her own orders, made in vindication of her own neutrality, had been violated or not."

The attorney general's opinion was not given at length; but he (Mr. Peacocke) would show, in a case he should quote, that the part of it which was found fault with was exactly in accordance with the law as laid down in the courts. As regards the concluding part of the dispatch, it might be nothing more than a harmless platitude; but it might mean a good deal more; it might mean that we were to look behind the flag and the commission of a vessel of war, and he would presently show that such was the spirit in which those instructions were understood and carried out. The cream and gist of the dispatch lay in the concluding paragraph.

"I think that the allegations of the United States consul ought to have been brought to the knowledge of Captain Semmes while the Tuscaloosa was still within British waters, and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa's papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters, in violation of her Majesty's orders made for the purpose of maintaining

her neutrality, I consider that the mode of proceeding in such circumstances, most consistent with her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by her captors, and to retain that vessel under her Majesty's control and jurisdiction until properly reclaimed by her original owners."—*Correspondence*, No. 6, (1864,) pp. 18, 19.

Now, he did not believe that there was any learned gentleman in that House who would rise in his place and defend the legality of those instructions. Let there be no mistake upon the point. He asked the honorable and learned member for Richmond (the attorney general) if he was prepared to stake his professional reputation in defense of those instructions, for it was a well-known principle of international law that as between two belligerents, the property of one belligerent when seized by another became the property of the captor, and that the claim of the original owner was entirely and absolutely extinguished, and therefore it would have been just as much within the principles of international law if our government had ordered our governor at the Cape to seize the vessel and to hand it over to the Emperor of Russia, as to hand the vessel over to the original owner. But he had the satisfaction of finding that whereas, in a previous paragraph, the colonial secretary stated that he was advised in the last paragraph the writer only "thought," and putting this in connection with what he had heard in another place, he believed that these instructions were not issued in accordance with the advice of the law officers of the Crown, but simply and solely upon the responsibility of her Majesty's government. He regarded them simply as a weak and illegal concession by Lord Russell to the demands of Mr. Adams. Sir P. Wodehouse replied:

"Your grace intimates that the citation from this authority by the acting attorney general does not appear to have any direct bearing upon the question. You will assuredly believe that it is not from any want of respect for your opinion, but solely from a desire to avoid future error, that I confess my inability to understand this intimation, or, in the absence of instructions on that head, to see in what direction I am to look for the law bearing on this subject. The paragraph cited made no distinction between a vessel with cargo and a vessel without cargo; and your grace leaves me in ignorance whether her character would have been changed if Captain Semmes had got rid of the cargo before claiming for her admission as a ship of war. Certainly, acts have been done by him which, according to Wheaton, constituted a 'setting forth as a vessel of war.' Your grace likewise states: 'Whether in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent government, without being first brought *infra presidia*, or condemned by a court of prize, the character of prize, within the meaning of her Majesty's orders, would or would not be merged in a national ship of war, I am not called upon to explain.' I feel myself forced to ask for further advice on this point, on which it is quite possible I may be called upon to take an active part. I have already, in error, apparently, admitted a confederate prize as a ship of war. The chief authority on international law to which it is in my power to refer is Wheaton, who apparently draws no distinction between ships of war and other ships when found in the position of prizes, and I wish your grace to be aware that within the last few days the commander of a United States ship of war observed to me that if it were his good fortune to capture the Alabama he should convert her into a federal cruiser. I trust your grace will see how desirable it is that I should be fully informed of the views of her Majesty's government on these points, and that I shall be favored with a reply to this dispatch at your earliest convenience."—*Correspondence*, No. 6, (1864,) p. 20.

He had only to add that his grace had not considered it "desirable" to furnish Sir Philip Wodehouse with the information he required, nor to reply to him at his earliest convenience, for (the House would hardly believe it) no answer had been sent up to the present time, or at all events there was no reply included in the papers before the House. The Tuscaloosa sailed from the Cape and returned after a cruise of some weeks' duration. She had before been treated as a vessel of war, and expected to be so treated again; but on her return she was captured by Sir Baldwin Walker, who thus reported the circumstance. On the return of the Tuscaloosa to the Cape they found their old friend Admiral Sir Baldwin Walker writing:

"As it appears that this vessel, the Tuscaloosa, late federal ship Conrad, is an unconquered prize, brought into British waters in violation of her Majesty's orders, made for the purpose of maintaining her neutrality, I therefore consider that she ought to be detained with the view of her being reclaimed by her original owners, in accordance with the opinion of the law officers of the Crown, forwarded for my guidance, the copy of which I have already transmitted to you." (p. 21)

He believed that when the honorable and learned member for Richmond rose to address the House, he would not defend the course of transmitting the opinion of the law officers for the guidance of the colonial authorities, but observe a discreet silence upon the point. When he (Mr. Peacocke) asked the noble lord at the head of the government to produce the opinion of the law officers, the noble lord replied that it was not the custom to lay on the table the opinions of the law officers, and that those

opinions were confidential and were intended only for the guidance of the government, upon which they could act or not as they pleased. He concurred with this statement; but why, then, was not the opinion of the law officers embodied in a dispatch, and why was not that dispatch sent to the authorities at the Cape for their information and guidance? A very bad habit had grown up of late upon the part of many ministers, and more especially on the part of Lord Russell, of stating, whenever a point of international law arose, that he had taken the opinion of the law officers, and, as this opinion could not be produced, the jurisdiction of the House was thereby fettered, and they were unable to discuss satisfactorily a question of policy. Responsibility was thus shuffled off, if even the paper was ultimately laid on the table. Matters were not very much improved, for, even in that case, ministerial responsibility would be very much shuffled off and evaded. Take the present case, for instance. Who were responsible? The authorities at the Cape were not responsible, for they had only acted on a fair interpretation of the opinion forwarded to them for their guidance. The ministry were hardly responsible, for they had been little more than the official channel for sending the opinion of the law officers to the Cape. And lastly, the law officers could not be regarded as responsible, because, in the language of Lord Palmerston, they had only given a confidential opinion to the ministry. He hoped that the noble lord, who seemed to be alive to the unconstitutional nature of the practice, would put a stop to it as regarded his colleagues and subordinates. Though they had not got the opinion of the law officers, the House might arrive at some approximate idea of what that opinion was from the answers given to questions which Sir Baldwin Walker, in accordance with instructions, put to the commander of the *Tuscaloosa*. From this it appeared that the vessel was sailing under the confederate flag; that her commander was Lieutenant Low; that she had on board four officers and twenty men; that she had three small brass guns, two rifled 12-pounders, and a smooth-bore; that she was cruising, and had put in to the Cape for repairs and supplies; that her commander had a commission from Captain Semmes; that the other officers also had commissions signed by him, and that she had no cargo on board. This showed that the opinion of the law officers of the Crown did not turn upon the nature of the cargo. Now, what was the law upon this question? Wheaton said that the jurisdiction of the national courts of the captor to determine the validity of captures made in war under the authority of the government was conclusive of the judicial authority of every other country, with two exceptions only: 1, when the capture was made within the territorial limits of a neutral state; and 2, when it was made by armed vessels fitted out within the neutral territory. Neither of these exceptions applied here. In the case of the *Exchange*, an American vessel seized by the French, and armed by them, and which afterward entered under the French flag the port of Philadelphia, where she was attached, Chief Justice Marshall said:

"It seems, then, to the court to be a principle of public law that ships of war entering the port of a friendly power open for their reception are to be considered as exempted by the consent of that power from its jurisdiction."

The arguments in favor of this opinion have been drawn from the general inability of the judicial power to enforce its decisions in cases of this description, from the consideration that the sovereign power of the nation is alone competent to avenge wrongs committed by a sovereign; that the questions to which such wrongs give birth are rather questions of policy than of law; that they are for diplomatic rather than legal discussion."

In other words, if the English government had wished to raise any question in this case, they should have raised it at Richmond, and not at the Cape. In the case of the *Santissima Trinidad*, Chief Justice Story said:

"Nor will the courts of a foreign country inquire into the means by which the title to property has been acquired. It would be to exert the right of examining into the validity of the acts of the foreign sovereign, and to sit in judgment upon them in cases where he has not conceded the jurisdiction, and where it would be inconsistent with his own supremacy. The commission, therefore, of a public ship when duly authenticated, so far at least as foreign courts are concerned, imparts absolute verity, and the title is not examinable. The property must be taken to be duly acquired, and cannot be controverted."

These opinions established the fact that if there was a commission you could not look behind it, and the only question remaining, therefore, was whether Captain Semmes had any right to grant this commission. In the case of the *Ceylon*, which was an English East Indiaman, captured by some French frigates, supplied with carronades, and a crew of seventy men, and which then cruised under the command of a lieutenant, with a commission from a commodore, Sir William Scott, afterwards Lord Stowell, said:

"I hold it to be unnecessary that she should have been regularly commissioned; it is enough that she was employed in the public military service of the enemy by those who had competent authority so to employ her."

Sir William Scott then quoted the case of the *Castor*, which ship was not carried into port, and added:

"There was no regular commission, for it is not in the power of the admiral to grant

a regular commission; he has only an inchoate authority for such a purpose, and his acts necessarily require confirmation. Yet in that case it was held that the ship, though commissioned by the admiral alone, was sufficiently clothed with the character of a vessel of war. * * * We know extremely well that in remote parts of the world, where the domestic authority cannot be immediately resorted to, the commanders are of necessity vested with larger powers than are usually intrusted to them when employed on European stations. I think this vessel was sufficiently commissioned by the French commander on the station. This *Lieutenant de vaisseau* and seventy men were put on board by his order in the first instance, subject undoubtedly to the approbation of the French minister of marine; but can I doubt that this appointment would have been confirmed by the constituted authorities at home in the present situation of the French navy?"

Could the government doubt that the commission granted by Captain Semmes would have been duly confirmed by the authorities at Richmond? Another case, that of the *Georgiana*, was stronger still, and seemed to be exactly on all-fours with the present. The *Georgiana* was a British whaler, captured by the American frigate *Essex*. The American captain, without taking his prize into port, or taking out the cargo, supplied her with ten additional guns and sixty men, and employed her, under one of his lieutenants, to cruise against British vessels. The force with which she had been supplied was subsequently reduced, and when she was taken she had only four guns and fifteen men on board. In that case, Sir William Scott held that she was sufficiently set forth for war, and that a commander of a single vessel had the same authority to grant a commission as a commodore. It seemed to him that, unless the law officers could override this decision by Lord Stowell, it was decisive of the question. It had been commonly our practice to commission vessels captured from an enemy; it is repeatedly referred to in James's Naval History; and this practice was so commonly received that the American captain at the Cape told the authorities there that if he captured the *Alabama* he would turn her into a federal cruiser. It was a curious fact that the government had taken no notice of these dispatches until March 4, and the dates coincided exactly with the time when this subject was taken up by the House. When pressed on the subject and asked if the vessel had been seized, the government took the matter into consideration and came to a hasty conclusion to write to the governor and say that they would give up the vessel; but they took a week to wrangle among themselves as to the reasons which should be assigned for that conclusion. At last, in a dispatch of March 10, (the Duke of Newcastle to Sir Philip Wodehouse,) they assigned these special reasons:

"I have now to explain that this decision was not founded on any general principle respecting the treatment of prizes captured by the cruisers of either belligerent, but on the peculiar circumstances of the case. The *Tuscaloosa* was allowed to enter the port of Cape Town and to depart, the instructions of the 4th of November not having arrived at the Cape before her departure. The captain of the *Alabama* was thus entitled to assume that he might equily bring her a second time into the same harbor, and it becomes unnecessary to discuss whether, on her return to the Cape, the *Tuscaloosa* still retained the character of a prize, or whether she had lost that character, and had assumed that of an armed tender to the *Alabama*, and whether that new character, if properly established and admitted, would have entitled her to the same privilege of admission which might be accorded to her captor, the *Alabama*. Her Majesty's government have, therefore, come to the opinion, founded on the special circumstances of this particular case, that the *Tuscaloosa* ought to be released, with a warning, however, to the captain of the *Alabama*, that the ships of war of the belligerents are not to be allowed to bring prizes into British ports, and that it rests with her Majesty's government to decide to what vessels that character belongs."—*Correspondence*, No. 6, (1864,) p. 31.

Now, in all this, there was not a single word, in answer to the request of Sir Philip Wodehouse, to have some requisite instructions given him how he was to act, and not one word as to the damages which had been incurred. What were the leading characteristics of the dispatch? They were uncertainty, uncertainty, uncertainty. Her Majesty's government declined to discuss the point whether the *Tuscaloosa* still retained her original character of a prize. They preferred shifting the responsibility from their own shoulders to those of the governor of the Cape, ready to condemn him if he was wrong, equally ready to condemn him if he was right. They gave him to understand that the *Tuscaloosa* was a prize, was seized as a prize, and that she was released because she had not before been treated as a vessel of war. But they did not lay down one of these propositions distinctly, and the governor could only arrive at this conclusion by implication. It was true that in this dispatch the Duke of Newcastle stated that the *Tuscaloosa* had been released for special reasons, but the governor could only judge what those reasons were by implication. Now, he would ask, was this a fair and straightforward manner of dealing with a servant of the Crown? Was it not, on the other hand, acting in a most cowardly and impolitic manner? If the servants of the Crown were to observe the law, they ought to have clear and definite instructions;

but if the government wished to embroil the country with foreign powers, the best way was to take the opposite course, to act as they had done, to harass them with contrary instructions, to involve them in legal subtleties which they themselves refused to solve and to embarrass them with diplomatic difficulties which they refused to explain. If everything else was misty and uncertain, one thing, at all events, was sure, and that was, that the instructions of November remained unrepealed, and were virtually reaffirmed; and he now called upon the House to demand their immediate repeal. As long as they continued in force what was our position? If we enforced them against the South we must also enforce them against the North. A federal captain had given notice, that if he captured one of the confederate vessels he would turn her into a cruiser. If we were to seize that vessel, and give her up to the confederates, would the federal government tolerate such treatment? If we applied these instructions against a strong power we should plunge the country into war. If we applied them against a weak power we should cover the country with unutterable shame. In the interest of peace, he called upon the House to pass a resolution for the revocation of those instructions, which, so long as they remained in force and unrepealed, were to this country a standing source at once of danger and disgrace.

Amendment proposed: To leave out from the word "that" to the end of the question, in order to add the words "the instructions contained in the dispatch of the Duke of Newcastle to Sir Philip Wodehouse, dated the 4th day of November, 1863, and which remain still unrevoked, are at variance with the principles of international law," (Mr. Peacocke,) instead thereof.

Question proposed: "That the words proposed to be left out stand part of the question."

The SOLICITOR GENERAL said the honorable member who had moved the resolution (Mr. Peacocke) did not ask the opinion of the House on a question of policy, but asked their judgment on a pure question of international law. He did not specify any objection he had to the dispatch of the Duke of Newcastle, but left his objection to be gathered from the tenor of his speech. In replying to the honorable member he was far from denying the perfect right and the competence of the House to entertain questions of international law; but all would agree that if the House were to entertain such questions, they should approach them in a judicial spirit, apart from any sympathies or antipathies that might be entertained. Questions of international law were not questions of a party character. And it appeared to him that the House ought to well consider before, by a solemn resolution, they affirmed or denied any principle of international law. It was not a usual course for the House to adopt. We should remember that we were now neutrals, and looked upon questions of international law from a neutral point of view. But the time might come, and might not be far distant, when we might again be belligerents and have to exercise belligerent rights; and when we exercised them it might happen that other neutral nations might turn any decision at which this House might arrive against us. It was right, therefore, to consider well before we furnished them with a weapon forged by ourselves, and which might be turned against us. Nothing could be quoted with such crushing effect as a resolution which the House had gone out of the way to adopt. The first question to be determined in this case was this: Was the *Tuscaloosa* when she came into Simon's Bay still a prize, or had she lost the character of a prize and assumed the new character of a vessel of war? There was no dispute about this, that she was a prize; that she had not been taken into any port of the Confederate States to be adjudicated upon and condemned; and that she was brought into the neutral harbor of Simon's Bay. Now, had she been *bona fide* converted from a merchant ship into a vessel of war in the confederate service, had she been *bona fide* converted? that was the real question. International law, like all other laws, distinguished between real transactions and mere pretenses. If, in one of our courts, it appeared that a trader had passed his property by a bill of sale to a friend, even though all the formalities had been adopted, the court would inquire as to whether the transaction was real or was merely a pretense—whether the trader really meant to convey his property, or merely intended to deceive his creditors. There was no rule of international law which required us to bandage our eyes so as not to see the reality of a transaction. The question here was whether the conversion of this trader into a man-of-war was a reality or a mere sham for the purpose of evading the Queen's orders. He thought the evidence would show beyond doubt that the conversion into a man-of-war was a mere pretense. What would be the consequences of adopting the opposite doctrine? Was it to be asserted that upon either a federal or a confederate captain bringing a prize into one of our ports, choosing to say, "This is a vessel of war," we had not the right to inquire whether that statement was true or false? If this were so, what would be the use of the Queen's orders? They might be set at naught; vessels might be brought into a port with two or three guns, or a flag to conceal their true character, in defiance of the Queen's orders, and the effect of those orders would be rendered null and void. Now, what were the facts as to the *Tuscaloosa*? Upon this point he could not help expressing his surprise and astonishment at the terms in which the honorable gentleman had spoken of so

distinguished an officer as Sir Baldwin Walker. His case could not be very strong if it required to be supported by such unfounded and ungenerous attacks. What difference on earth could it make personally to Sir Baldwin Walker whether this was a vessel of war or not? But certainly if there was any man who knew the difference between a merchantman and a vessel of war it was Sir Baldwin Walker, and the opinion of Sir Baldwin Walker was conclusive. It appeared that Captain Semmes mentioned, after his arrival at the port, that he had left outside one of his prizes previously taken, the Tuscaloosa, which he had equipped and fitted as a tender, and had ordered her to meet him in Simon's Bay, and said that she was a vessel of the confederate navy. That was the communication which he made to the governor. There was not a single word said as to any real or supposed commission. The attorney general of the colony thought, upon that statement, that it was not necessary to prevent her from coming into the port, and it was not necessary to determine whether that gentleman was right or wrong in that view of the case; and, indeed, it had never been the intention of the law officers of the Crown, or of the government, to impute the slightest blame to the attorney general or the governor; so far from it, in the last dispatch of the Duke of Newcastle he disclaimed any imputation whatever on any of the colonial authorities. The government differed from his second, if not from his first opinion; but it would be highly improper if they had attempted to blame him for the conclusion at which he had arrived on a difficult question, which might well be argued for several days, as in a late well-known case, before four learned judges, who in the end might be divided in opinion. The report of Sir Baldwin Walker upon the state of the vessel was perfectly conclusive as to her real character. Sir Baldwin, in his letter of the 8th of August, said:

"The vessel in question, now called the Tuscaloosa, arrived here this evening, and the boarding officer from my flag-ship obtained the following information: That she is a bark of 500 tons, with two small rifled 12-pounder guns and ten men, and was captured by the Alabama, on the 21st of June last, off the coast of Brazil; cargo of wool still on board."—*Correspondence*, No. 6, (1864,) p. 31.

These guns, it appeared, were guns which had been taken from another prize; they were no portion of the Alabama's armament. Sir Baldwin Walker then went on to say:

"The admission of this vessel into port will, I fear, open the door for numbers of vessels captured under similar circumstances being denominated tenders, with a view to avoid the prohibition contained in the Queen's instructions; and I would observe that the vessel Sea Bride, captured by the Alabama off Table Bay a few days since, or all other prizes, might be in like manner styled tenders, making the prohibition entirely null and void. I apprehend that, to bring a captured vessel under the denomination of a vessel of war, she must be fitted for warlike purposes, and not merely have a few men and two small guns put on board her (in fact nothing but a prize crew) in order to disguise her real character as a prize. Now this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes, and her armament and the number of her crew are quite insufficient for any services other than those of slight defense. Viewing all the circumstances of the case, they afford room for the supposition that the vessel is styled a 'tender' with the object of avoiding the prohibition against her entrance as a prize into our ports, where, if the captors wished, arrangements could be made for the disposal of her valuable cargo, the transhipment of which, your excellency will not fail to see, might be readily effected on any part of the coast beyond the limits of this colony." (P. 3.)

He would now call the attention of the House to the statement of Mr. Graham, the United States consul, which showed that the fears of Sir Baldwin Walker were unfounded; this gentleman said:

"The Tuscaloosa remained in Simon's Bay seven days, with her original cargo of skins and wool on board. This cargo, I am informed by those who claim to know, has been purchased by merchants in Cape Town; and if it should be landed here directly from the prize, or be transferred to other vessels at some secluded harbor on the coast beyond this colony, and brought from thence here, the infringement of neutrality will be so palpable and flagrant that her Majesty's government will probably satisfy the claims of the owners gracefully and at once, and thus remove all cause of complaint. In so doing it will have to disavow and repudiate the acts of its executive agents here—a result I have done all in my power to prevent."—*Correspondence*, No. 6, (1864,) p. 12.

Now, he thought the House would be of opinion that the American consul's information was very correct, for something more was known of this transaction. The case of the Saxon had been brought before the House a short time since, and it was known what had become of the cargo of the Tuscaloosa. The cargo of the Tuscaloosa actually was deposited at a place just outside the limits of the colony, called Angra Pequena, and the Saxon was sent from Cape Town to fetch it. No man could doubt for a moment that the arrangement was made while the Tuscaloosa was at Simon's Bay, and the object of this disguise, this sham, this imposture, was to make that arrangement. That was the real transaction. The government were of opinion that, under the circum-

stances, the vessel did not lose her character as a prize, and that she had not obtained the character of a vessel of war. They were also of opinion that the passage from *Wheaton*, which the colonial attorney general had fired at the admiral, to which that gallant officer reluctantly succumbed, did not apply. The admiral stood out, but the attorney general and *Wheaton* compelled him to surrender. The passage cited by the attorney general referred entirely to the construction of the words of a municipal statute, which this country and the United States, in pretty nearly the same words, were in the habit of passing at the breaking out of a war, for the simple object of regulating the distribution of prize money. It was to the effect that if a merchant vessel were captured by the enemy, and if subsequently she were recaptured by one of our own vessels, then, if she had been "set forth as a vessel of war," her proceeds would go to her captors; but if she retained her original character of a merchant vessel, then she would revert to her original owners, paying salvage. That was the sole object of the statute, and it had no reference whatever to international law. The House would see, therefore, that the question which arose in this case could not possibly arise under that statute, because the enemy could have no object in colorably and ostensibly "setting forth" a vessel as a vessel of war; for it was no matter to him, if she were recaptured, to whom her proceeds would go. No doubt it was easy for any one reading only the passage by itself, without referring to the authorities, to be misled by it. This was what *Wheaton* said:

"Thus it has been settled, that where a ship was originally armed for the slave trade, and after capture an additional number of men were put on board, but there was no commission of war and no additional arming, it was not a setting forth as a vessel of war under the act. But a commission of war is decisive if there be guns on board, and where the vessel, after the capture, has been fitted out as a privateer it is conclusive against her, although, when recaptured, she is navigating as a mere merchant ship."

The honorable gentleman said it did not signify how many guns there were. He (the solicitor general) had taken the trouble to ascertain on what authority that rested, and he found it to be the case of the Ceylon, in the first volume of *Dodson's Reports*. Here were the words of Lord Stowell's judgment:

"She had on board twenty-six guns, one hundred and ten men, with arms and ammunition of every description in sufficient quantities for offensive and defensive operations.

" * * * She sustained an engagement with British ships, and assisted in the destruction of the *Sirius* and *Magicienne*, and in the capture of two English frigates. Here, then, was an operation, not merely defensive, but an actual offensive attack, terminating in the destruction of the British blockading squadron. I cannot doubt that under these circumstances the ship was sufficiently 'set out for war.'"

He ventured to think that if Lord Stowell had had the case of the *Tuscaloosa* before him, and had to determine the question whether she was set forth as a ship of war, he would, unquestionably, have said that she was not sufficiently set out for war. She was armed with two guns only; she had only ten men, hardly enough for navigating her, to say nothing of fighting; and she had her cargo on board, which made her almost unavailable for fighting purposes. She had not been employed for any hostile operations; and, further, Admiral Walker said after inspecting her, that in his judgment she was not capable of attack or defense. His words were, "except of very slight defense." Now, even if all the cases cited did apply—if the statute did apply, which he had shown that it did not—still, he ventured to say there was no case of setting forth for war that would not exclude the *Tuscaloosa*. It therefore appeared to him perfectly clear that Admiral Walker was right in his view of that vessel not having lost her character of prize, and that unquestionably she ought not to be admitted as a man-of-war. This led him to the dispatch sent to the authorities at the Cape that had been objected to by the honorable gentleman. The motion of the honorable gentleman would appear to intimate that every proposition of international law contained in that dispatch was wrong, although he understood him to limit that by his speech. Now he (the solicitor general) undertook to show that it was strictly in accordance with the principles of international law. After referring to the *Sea Bride* the dispatch said:

"With respect to the *Alabama* herself, it is clear that neither you nor any other authority at the Cape could exercise any jurisdiction over her, and that, whatever may have been her previous history, you were bound to treat her as a ship of war belonging to a belligerent power." (P. 18.)

He apprehended that honorable gentleman opposite would admit that that was right. Then came this passage:

"With regard to the vessel called the *Tuscaloosa*, I am advised that this vessel did not lose the character of a prize captured by the *Alabama*, merely because she was, at the time of her being brought within British waters, armed with two small rifled guns, in charge of an officer and manned with a crew of ten men from the *Alabama*, and used as a tender to that vessel under the authority of Captain Semmes."—*Correspondence*, No. 6, (1864,) p. 18.

The honorable gentleman had imported into the case the state in which the vessel

was when she returned at another time, but the real question was as to her state at the time when she first entered Simon's Bay. His grace's dispatch went on to say:

"It would appear that the Tuscaloosa is a bark of five hundred tons, captured by the Alabama off the coast of Brazil, on the 21st of June last, and brought into Simon's Bay on or before the 7th of August, with her original cargo of wool (itself, as well as the vessel, prize) still on board, and with nothing to give her a warlike character (so far as is stated in the papers before me) except the circumstances already noticed. Whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent government, without being first brought *infra præsidia* or condemned by a court of prize, the character of prize, within the meaning of her Majesty's orders, would or would not be merged in that of a national ship of war, I am not called upon to explain. It is enough to say that the citation from Mr. Wheaton's book by your attorney general does not appear to me to have any direct bearing upon the question."—*Correspondence*, No. 6, (1864,) p. 18.

That was perfectly correct, for the question there was a question of fact, whether she was actually turned into a public vessel of war. It was clear that she was not, and therefore the question did not arise of what would have been done if she had been. The Duke of Newcastle very properly eliminated points of difficulty which it was thus unnecessary to consider. The dispatch continued:

"Connected with this subject is the question as to the cargoes of captured vessels which is alluded to at the end of your dispatch. On this point I have to instruct you that her Majesty's orders apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes, if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors. I think it right to observe that the third reason alleged by the attorney general for his opinion assumes (though the fact had not been made the subject of any inquiry) that 'no means existed for determining whether the ship had or had not been judicially condemned in a court of competent jurisdiction,' and the proposition that, 'admitting her to have been captured by a ship of war of the Confederate States, she was entitled to refer her Majesty's government, in case of any dispute, to the court of her States, in order to satisfy it as to her real character.' This assumption, however, is not consistent with her Majesty's undoubted right to determine, within her own territory, whether her own orders, made in vindication of her own neutrality, have been violated or not." (P. 18.)

He apprehended that the assertion of that proposition was necessary to the maintenance of any independent sovereignty. Was it to be contended that when her Majesty issued an order directing that prizes should not be brought into her ports, if a federal or a confederate brought in a prize and said, "Oh! this is a vessel of war," her Majesty was not to determine the question? It was an admitted fact that the vessel had not been condemned or taken before any court of competent jurisdiction by the captor. The honorable member had referred to the case of the Santissima Trinidad; but if he had examined it he would have found that it affirmed, beyond all question, the doctrine for which he (the solicitor general) was now contending; because in that case the United States took upon themselves to determine whether a prize brought into their ports should or should not be restored to the original owners. And they determine that question in their own courts. Ordinarily, the determination of the question of prize or no prize was for the court of the captor; but the United States, where the prize was brought into their ports in violation of their neutrality, claimed to determine and did determine that question. Therefore the case cited by the honorable gentleman was entirely fatal to his argument. He now came to the latter part of the dispatch, which was in these terms:

"The question remains what course ought to have been taken by the authorities of the Cape.—1. In order to ascertain whether this vessel was, as alleged by the United States consul, an uncondemned prize brought within British waters in violation of her Majesty's neutrality; and 2d. What ought to have been done if such had appeared to be really the fact. I think that the allegation of the United States consul ought to have been brought to the knowledge of Captain Semmes while the Tuscaloosa was still within British waters, and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa's papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of her Majesty's orders made for the purpose of maintaining her neutrality, I consider that the mode of proceeding in such circumstances, most consistent with her Majesty's dignity and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under her Majesty's control and jurisdiction until properly reclaimed by her original owners." (P. 18.)

On that subject he would deal quite frankly with the House. He would admit, on the part of her Majesty's government, that, upon reconsideration, they thought these instructions were not as full and explicit as they ought to have been—that was to say, as they should and would have been if meant to be used as a guide for colonial governors throughout the empire. But he would be allowed to observe that that dispatch was not in the nature of a circular or order issued to the governors of colonies throughout the empire. It was merely a comment of the Duke of Newcastle on that particular transaction after it had passed, and when he had no reason to suppose that the Tuscaloosa would return. If it had occurred to his grace as probable that she would return, (and he would hardly be blamed for not foreseeing what, after all, was a remote possibility,) the dispatch would have contained some further instructions, such instructions as were subsequently given, to the effect that inasmuch as the Tuscaloosa was, rightly or wrongly, treated as a vessel of war after she came into their ports, and after her real character was ascertained, she should have been warned off. If it had occurred to the Duke of Newcastle, provision might have been made in the dispatch for possible circumstances, and, undoubtedly, some fuller instructions would have been advisable to the effect that a vessel of war bringing with her a prize should be prohibited from entering our ports, or if she entered, be immediately warned to depart. He might inform the House that this subject had received the serious consideration of the government, and instructions were about to be sent by way of circular to the colonial governors of this country. These instructions were, in fact, drawn up, though they had not yet been sent off. Ample and detailed instructions would be given, which would hereafter leave no difficulty to colonial governors and law officers. He was at liberty to say that those instructions would in a very short time be laid on the table. The House would, therefore, see that this was an isolated case, and not likely to be drawn into a precedent. But, having said thus much, he now proceeded to the question raised by the honorable gentleman, whether this dispatch asserted doctrines at variance with the principles of international law. He contended that it did not. He had frankly admitted that more full instructions were desirable, and would be sent, but that the dispatch enunciated any false principle of international law he entirely denied. What was the principle of international law on this subject? He apprehended that the governing principle of international law applicable to such cases as this was that the territory of a neutral was inviolate; that a neutral had the right to possess its territory entirely free from all hostile operations, direct or indirect, and, if it pleased, from the presence of either belligerent. A neutral had a right to say to both belligerents, *procul este profani*. Her Majesty had not gone the length she might have gone, of preventing the entrance into her ports of armed vessels of either belligerent; but she had strictly prohibited armed vessels bringing their prizes within her ports. He was now dealing with the questions of international law, and the hypothesis was this—a prize was brought in in violation of the Queen's orders and of her neutrality; and he said if a prize was brought in in defiance of the Queen's orders the captain was guilty at once of a violation of international law and of the Queen's neutrality. Under these circumstances, it was for the Queen to determine in what manner she should think fit to vindicate her neutrality; and if she chose to vindicate her neutrality by detaining the prize, in order that the claimant might have the opportunity which the United States consul desired, of instituting proceedings, or that other inquiry she thought fit might be made, she had a right to do so; and further, if she did exercise that power, he maintained that the captain of the offending vessel who brought the prize in in contravention of the Queen's order, being himself an offender against international law and a wrong-doer, had no *locus standi* on the ground of international law, to complain of any measures her Majesty might think proper to take for the vindication of that neutrality which he had violated. That was the principle of international law applicable to this case. The Queen had perfect right to restore the vessel to her original owner. There was abundant authority for that doctrine. He repeated it: The principle was that neutrality had been violated, and it was for the neutral whose neutrality was violated to determine the manner in which that neutrality should be vindicated. Suppose a vessel captured within neutral waters, in our waters, and subsequently brought back as a prize; had the Queen, aye or no, the power of restoring her to her original owner? The right honorable gentleman who was about to follow him must deal with that question. All authority was in favor of the right. Wheaton, who has been so much referred to, had this passage:

"Where the capture of enemy's property is made within neutral territory, or by armaments unlawfully fitted out within the same, it is the right as well as the duty of the neutral state, when the property thus taken comes into its possession, to restore it to the original owners."

What was the principle on which a vessel taken in neutral waters was restored? Be it remembered that as between belligerents the capture of a vessel in neutral waters was perfectly good. The principle was that when a neutrality had been violated, it was for the neutral to determine in what manner he should vindicate his neutrality. The United States had acted on that principle for upwards of seventy years. The same

principle applied to cases of the restoration of prizes made by armaments unlawfully fitted out within the territories of neutrals. That had been done again and again. Why? Because their neutrality had been violated. It was true that there had been no case decided in the United States in precisely the same circumstances; and why? Because the circumstances had never existed. The United States had not issued, like her Majesty, orders prohibiting prizes coming into their ports, and therefore a breach of neutrality of that species had not occurred; but there could be no doubt, if it had occurred, the United States would have acted accordingly. This principle and practice were entirely applicable to this case, which was, no doubt, novel in its circumstances; the principle, however, was identical. He therefore called on the House most emphatically not to approve the resolution of the honorable gentleman, which went the full length of declaring that Wheaton was wrong, and the whole course of the United States for seventy years, of which we had enjoyed the benefit, had also been wrong. If these authorities were to be upset, it should be not by one night's discussion in that House, but by the judicial decision of a competent court of law. He ventured to point out to the House the great danger of adopting such a resolution as that of the honorable gentleman. Such a course might be very inconvenient to this country, as he would show. We believed that our maritime strength was such that with whatever power we might happen to be at war, we should always be able to blockade his ports to prevent the issue of vessels of war and the entrance of prizes taken from us. But suppose that the enemy resorted to American ports, and fitted out Alabamas from them, and took their prizes into the American ports; what should we do? We should claim that those prizes be restored to us. But how could we do that if this resolution were passed? We should be met with the reply, "You have passed a resolution which, in fact, avers that, however much and in whatever manner the neutrality of a state has been violated, the state has no jurisdiction to restore the prizes." In that way we might find this resolution to the last degree inconvenient to ourselves. Upon those grounds, and thanking the House for the patience with which they had listened to him upon what was chiefly a technical subject, he trusted that the House would not affirm a resolution which was not necessary, which could not be useful, which could have no practical effect, and which might hereafter be attended with serious inconvenience to ourselves.

Mr. WHITESIDE. Sir: the honorable and learned gentleman said, at the outset of his able speech, that there was no question of policy involved in this discussion. I beg leave to deny that proposition. There is the policy which led to instructions so legal and so perfect that we are told by the honorable and learned gentleman that they are about to be immediately modified or repealed. I say there are involved in this debate questions of policy and law of a very interesting character. I agree with the honorable and learned gentleman that these questions should be discussed in a manner commensurate with their importance. When I first read these papers I asked myself how it happened that such extraordinary dispatches should have emanated from any department of the government. I answered myself by saying, "The authorities ruling at the Foreign Office at that moment thought the war was going against the South, and that it was extremely likely the North would be successful." I called to mind the speech at Blairgowrie; and, although I remembered the most statesmanlike speech of the chancellor of the exchequer at Newcastle—that Jefferson Davis, as he called him, had not only made an army and a navy, but had made a nation—yet I saw that one was later in date than the other. I accept the declaration of the solicitor general that we ought to preserve strict neutrality. But we complain that the law of neutrality has been improperly violated in this matter, that the transaction is indefensible, and I am satisfied that the honorable and learned gentleman, and his learned colleague the attorney general, have advised the Crown that it is indefensible, and that they have corrected the very instructions of this dispatch which the solicitor general employed a good portion of his speech to prove were so perfect as not to need correction. The facts of the case are very simple. I heard with surprise the honorable and learned gentleman several times in the course of his speech talk of "shams" as well as realities. There are no "shams" in the case of the Tuscaloosa—it was a painful reality, as my honorable and learned friend would admit. That vessel was originally called the Conrad, under which name she had been a merchant vessel. It is important to bear in mind the real facts when we find astute lawyers raising questions which do not arise—supposing facts which do not exist, upon which they construct a visionary argument and call upon the House to decide, not upon the facts before us, but upon other matters imagined by the learned gentleman who addresses us. It seems to me that now it is the admirals who decide the law and the lawyers who decide upon naval tactics; because, as the case stands, Admiral Walker has overruled the attorney general, and I understand the law officers at home have sent out instructions to the naval captains telling them how they are to behave. It was not by acting upon such instructions that Nelson won the Nile and Trafalgar. I will not say anything about the Duke of Newcastle in relation to this dispatch, because I agree with my honorable friend that there are traces of another hand being engaged upon it—a hand with which we

are painfully acquainted. Now, it is agreed that the Tuscaloosa, while called the Conrad, formerly belonged to the federal States. The vessel was captured by the confederates off the coast of Brazil on the 21st of June, with a cargo of wool on board. I ask my honorable and learned friend and the House what was on that day the law arising out of those facts. When the ship of one belligerent strikes its flag to a ship of the other belligerent, what is the result that arises, does not the ship which yields belong to the captor; or can it by any ingenious argument be made to belong to somebody else? The captor may burn or destroy the vessel, or not, according as the interests of his country might suggest. That has been done, and Lord Stowell says the captor has a right to do so when he is so instructed. It is really ridiculous to argue, then, as though there were any nation which had more frequently asserted that right than ourselves. Surely you are not going to apply a different law to the Confederate States from what our own admirals act upon, and then plume yourselves upon your strict neutrality and your strong sense of justice! I say that the ownership of the property was changed by the fact of the capture. I deny that any judgment or adjudication was necessary. If a man on board a captured ship disputed the right of the captor, his answer would be, "Do not make a noise, or I will shoot you." The object, the horrible object of war is to cripple the commerce and to damage the power of the country with which you are at war, and not to indulge in the interchange of polite compliments. We have acknowledged to be a belligerent, that power which the chancellor of the exchequer has described as a nation—a power which is commencing her fourth campaign in vindication of her independence; she is entitled to all the rights of a belligerent, and having by the exercise of such rights captured the Conrad on the 21st of June, the property in that vessel passed at once to Captain Semmes without any necessity for adjudication or condemnation. The captain of the Alabama then put on board two guns and ten men, under a lieutenant, and changed her name to the Tuscaloosa. The next question is whether the officer in command of the Alabama was lawfully commissioned by the Confederate States. That has been clearly admitted by the Duke of Newcastle, who says that his authority as commander of a vessel belonging to a belligerent power was not open to dispute. The next question is, had Captain Semmes power to grant a commission to the person he placed in command of the Tuscaloosa? Is that denied by the law officers of the Crown? The words of Lord Stowell in a similar case were that it was only necessary to see that the officer put in command had even the semblance of authority, and we ought not to inquire at length into the nature of the commission. We will see how that matter stands when we come to the statement of Sir Baldwin Walker, as we find that all he says is to be adopted, and everything said by everybody else at the Cape is to be rejected. Our practice is that a commission granted by the admiral or captain abroad is subject to the approval of the admiralty at home; but Lord Stowell decided that the commander of a single ship might grant a commission, and thus the commander of the Alabama would have full authority to do so. I say that you cannot go behind the commission according to the decisions of our own courts nor by the reason of the thing; nor can you inquire whether the ship is something different from what she appears to be. I say the effect of the commission in this case was to change the character of the captured ship and to make her a vessel of war, employed by a lawfully appointed commander in the confederate navy. She was a ship in the lawful employment of a belligerent power, having the right to burn, sink, destroy, or capture the ships and property of an enemy with whom that power was at war. We find that the Alabama and Tuscaloosa remained some time in company. The talk about the wool is a mere device of no value—of no more value than it would have been if the whaler captured by the Americans during the last war had had a cargo of whales on board. It was decided by Sir William Scott that the fact of the American officer having put some guns on board the whaler had changed it into a ship of war, and it became the prize of the officer who took it. The Alabama and the Tuscaloosa continued in company until the 6th of August; it is, as the solicitor general said, quite true that the Cape of Good Hope is a neutral port; but, then, this vessel must be regarded either as a prize or as a ship of war; and if it was a prize the conduct of the framers of these instructions is indefensible, while if it was a ship of war the course which they took is quite inexcusable. Now, I admit that there was a proclamation of the Queen that forbids the captor to bring a prize into the Cape, but there remains the question, what was to be done in the present instance? The course which was taken, notwithstanding what has fallen from the solicitor general, will, I would venture to say, never again be repeated by this or any other government. Be that, however, as it may, the proclamation was very important. It was perfectly well known to the commander of the Alabama, who is described by Sir Baldwin Walker (banished at a particular crisis from this country to appear in a superior position at the Cape) as a courteous and gentlemanly person. Captain Semmes, it seems, applied for leave to procure some fresh water and provisions and repairs, and announced that he had outside the harbor his tender called the Tuscaloosa. [A laugh.] His honorable and learned friend the attorney general appeared quite amused; but it appeared to him (Mr. Whiteside) a

very proper course to pursue; and here I may observe that it is somewhat remarkable that if an official or a clerk at a distant station acts illegally, rashly, or unscrupulously, he is sure to be defended by the noble viscount at the head of the government, while if he acts with ability and discretion he is certain to be thrown overboard. We all remember the declaration of the noble viscount about the judgment and discretion displayed in the well-known case of the *lorcha Arrow*; but, passing by that point, it would seem that Admiral Walker undertook to decide the law in this matter. Now, although I have the greatest respect for seafaring men, yet I deny that their authority is in such cases so satisfactory as that of the attorney general. Now, there is an attorney general at the Cape—Mr. Porter—than whom, if he be the man I knew in former times, you could have no better educated person. [An honorable member—"Mr. Stevenson is the acting attorney."] Well, that did not matter; the attorney general gave his opinion, but the government set it aside. The solicitor general has used the term sham, and repeated the expression. He compared the case to mere cases of roguishness that occurred in Westminster Hall. The captain of the *Alabama* was asked how long he wished to remain, how many days, and what was the list of articles he required. All these particulars were furnished. During that time, was there a particle of evidence to show that he sought to sell the wool; and what was the use of the solicitor general saying that he meant to do that which he did not, and that the fact asserted was to be taken for granted? He remained there as he ought to remain; got his provisions; the *Tuscaloosa* got the repairs she wanted; Admiral Walker was overruled, and the two vessels left, I believe, in about seven days. I beg now to call the attention of the house to what was said by another able lawyer, the consul of the United States at the Cape. Before the ships left, he applied to the governor to seize the vessel. "I cannot," said the governor. "I tell you what we will do then," answered the consul; "the moment we take the *Alabama* we will do everything this captain has done with the *Tuscaloosa*; we will turn it into a ship to be used against the confederates." "Quite fair," added the governor, "I cannot prevent you from doing so any more than I can prevent this gentleman from turning the *Tuscaloosa* into a tender to the *Alabama*, and putting a lieutenant on board." "But," replied the consul, "if you do not seize the vessel, you ought at once to order her to depart from this port." Here the consul suggested the right course to adopt if there had been a violation of the law and the proclamation of neutrality. Now, I do not find a single thing to complain of in this correspondence, I do not at all complain of Sir Baldwin Walker for having laid his doubts before the governor; and it will, I think, be time enough for the solicitor general when every ship taken is converted into a tender to lay down his maxims with as much solemnity as he has done to-night. No candid man can, in my opinion, underrate the fact that the lieutenant on board the ship had a legal commission at the outset; and what happened next? The proceedings at the Cape were, together with the opinion of Sir Baldwin Walker, sent to the government in this country. The affair so far as the Cape of Good Hope was concerned was at an end, and the vessels departed unmolested. The subordinate officials at the Cape performed their duty faithfully, conducted the inquiry honorably, and acted with the strictest propriety, and without the least deviation from the law of neutrality. And here I may observe, that we had in the North American correspondence a dispatch which gives us a key to the course pursued by Earl Russell. Mr. Adams, having had the case laid before him by the American consul at the Cape, pressed the noble earl to do something in reference to this ship. The dispatch of the 29th of October shows pretty clearly what led to the issuing of the instructions of the 4th of November. As to those instructions, they were told that nothing occurred prior to the 4th of November of any consequence. But, with all deference to my honorable and learned friend, a very important matter occurred in the interval. The *Alabama* visited the Cape again. On the 17th of September there is a dispatch from Sir Baldwin Walker, who had misgivings about the ship. This document was in your possession early in October, and it proves that the commander had made explanations to the gallant admiral in reference to what had been done. On the 17th of September Sir Baldwin Walker writes:

"Captain Semmes frankly explained that the prize *Sea Bride*, in the first place, had put into Saldanha Bay through stress of weather, and on being joined there by the *Tuscaloosa*, both vessels proceeded to Angra Pequena, on the west coast of Africa, where he subsequently joined them in the *Alabama*, and there sold the *Sea Bride* and her cargo to an English subject who resides at Cape Town. The *Tuscaloosa* had landed some wool at Angra Pequena and received ballast, but he states, is still in commission as a tender. I have no reason to doubt Captain Semmes's explanation; he seems to be fully alive to the instruction of her Majesty's government, and appears to be most anxious not to commit any breach of neutrality."—*Correspondence*, No. 6, (1864,) p. 17.

Thus the matter stands; the wool was not sold at the Cape, but was disposed of long afterwards in Africa. Captain Semmes returned to the Cape in September, and gave an explanation of everything connected with the *Tuscaloosa* to Sir Baldwin Walker, who wrote home that he was entirely satisfied with that explanation, part of which was that the *Tuscaloosa* was still in commission as a tender to a confederate ship

of war. It was with these facts before him, and advised by the lawyers whom I see opposite, or rather, I suspect, not advised by them, that somebody at home sat down and contrived the dispatch to which I must now call attention. The solicitor general asks what complaints we have to make. I complain of almost everything in the conduct of the case, whether as matter of fact or of law. After Sir Baldwin Walker had written home, stating that he was satisfied with the explanation of Captain Semmes respecting the *Tuscaloosa*, the following dispatch was sent on from Downing street:

"With regard to the vessel called the *Tuscaloosa*, I am advised that this vessel did not lose the character of a prize captured by the Alabama merely because she was, at the time of her being brought within British waters, armed with two small rifled guns, in charge of an officer and manned with a crew of ten men from the Alabama, and used as a tender to that vessel under the authority of Captain Semmes." (P. 18.)

Let me here remark that the question whether she was or was not that thing had been investigated at the Cape. The dispatch of the governor is explicit on the matter; the decision of the law officers is clear; the opinion of Sir Baldwin Walker is conclusive; yet with all those things before him the colonial secretary disputes a fact that had been inquired into in the only place where it could be investigated. He then proceeds to lay down this most extraordinary doctrine:

"Whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent government, without being first brought *infra præsidia* or condemned by a court of prize, the character of a prize, within the meaning of her Majesty's orders, would or would not be merged in that of a national ship of war, I am not called upon to explain." (P. 18.)

Not called upon to explain? The Colonial Office might as well be shut up at once. It was its business to explain. The distracted governor at the Cape says, "Tell me what to do." "No," replies the colonial secretary, "I scorn to enlighten you; I will leave you in your difficulties, but, at the same time, I will reverse your decision;" and the ground alleged is that most exquisite one by the solicitor general, "We do not believe any such case will occur again; we do not believe it could." They never wish to hear the name of the *Tuscaloosa* again, and while they invent a doctrine theoretically it is not to be put in force practically. Surely, says the solicitor general, the Duke of Newcastle could not suppose that the *Tuscaloosa* would return. Alas for the duke, she did come back, for at the end of five months the same ship upon which an inquiry had been held, and the explanation respecting which, given by Captain Semmes, had been considered satisfactory, sailed one fine morning into the Cape. "Oh!" cried Sir Baldwin Walker, "here she is again. Don't breathe a word to the attorney general, but seize the ship." The governor says there is no ground for seizing her; she has no wool on board. "We are to seize her," replies Sir Baldwin Walker, "in accordance with the general principles of international law, which do not apply to the case; we are to suppose she was in neutral waters when she was not so; we are to suppose she had English property on board when she had no English property on board; we are to suppose that she was recaptured when she was not recaptured; we are to suppose everything we cannot suppose, and, after exhausting our imaginations by inventing impossible cases, we are to obey the duke." During her absence the *Tuscaloosa* had been cruising in the service of a belligerent power, under the confederate flag, with a commission from a lawfully constituted officer, and she was seized because five months before she had wool on board, which she did not sell. "It is not possible," cried her astonished commander, "that you have seized my ship. Why have you done so?" They were very delicate about giving him the information he sought for, but eventually they told him they had been directed to act as they had done against their own judgments and that they had no discretion but to obey orders, and I must do our authorities at the Cape the justice to say that it was impossible to understand their instructions. The officer in command of the *Tuscaloosa*, when his vessel was seized, sat down and wrote words which, I think, no Englishman can read without a blush. I felt ashamed when I read them. Lieutenant Low, writing from Simon's Bay to Sir Philip Wodehouse, on the 28th December, 1863, said:

"In August last the *Tuscaloosa* arrived in Simon's Bay. She was not only recognized in the character which she lawfully claimed and stills claims to be, namely, a commissioned ship of war belonging to a belligerent power, but was allowed to remain in the harbor for the period of seven days, taking in supplies and effecting repairs with the full knowledge and sanction of the authorities. No intimation was given that she was regarded merely in the light of an ordinary prize, or that she was considered to be violating the laws of neutrality. Nor, when she notoriously left for a cruise on active service, was any intimation whatever conveyed that on her return to the port of a friendly power, where she had been received as a man-of-war, she would be regarded as a prize, as a violator of the Queen's proclamation of neutrality, and consequently liable to seizure. Misled by the conduct of her Majesty's government, I returned to Simon's Bay on the 26th instant, in very urgent want of repairs and supplies; to my surprise I find the *Tuscaloosa* is now no longer considered as a man-of-war, and she has by your orders, as I learn, been seized for the purpose of being handed over to the

person who claims her on behalf of her late owners. The character of the vessel, namely, that of a lawful commissioned man-of-war of the Confederate States of America, has not been altered since her first arrival in Simon's Bay, and she having been once fully recognized by the British authorities in command of this colony, and no notice or warning of change of opinion or of friendly feeling having been communicated by public notification or otherwise, I was entitled to expect to be again permitted to enter Simon's Bay without molestation. In perfect good faith I returned to Simon's Bay for mere necessities, and in all honor and good faith in return I should, on change of opinion or of policy on the part of the British authorities, have been desired to leave the port again. But by the course of proceedings taken I have been (supposing the view now taken by your excellency's government to be correct) first misled and next entrapped."—*Correspondence*, No. 6, (1864,) p. 23.

That is the statement of Lieutenant Low. Is it not strictly true? Was he not first misled and then entrapped? All the answer the governor at the Cape could make was, that he could not help it. I have referred to the dispatch of the 4th November from Downing street, and to the ingenious argument which the solicitor general founded upon it. He asks what would be the case of a vessel taken in neutral waters. Why, the law applicable to a clear violation of neutrality would be enforced; but the present case is one wholly different. The *Tuscaloosa* could not lawfully be seized either as a ship of war, or as a prize. It is admitted on all sides that, if a ship of war, she could not be touched, while if a prize, she could be sent away for violating the royal proclamation. Our authorities could have warned her off, but they had no authority to pursue any other course, and all the ingenuity of the solicitor general has been employed simply to conjure up some fanciful case, which has nothing to do with the subject of our present discussion. How were they to find the owner, and how was a question of the kind to be properly investigated? The invariable course adopted was, therefore, to warn such a vessel not to enter a port, or, if it had already entered, to order it to quit. The latter part of the dispatch of the 4th of November, which my honorable and learned friend read in a gentle tone, and said required amplifying and explaining—which is perfectly true—and adding to—which was not only correct, but would be done—said, "You are to keep the *Tuscaloosa*, if she comes in again, until properly reclaimed by her owners." Such an instruction was indefensible, and the plea that it applied only to a particular ship and to a particular harbor could not possibly be upheld in fair argument. To make the thing more completely ridiculous, the advice of the law officers of the Crown was taken, and another dispatch was written instructing the governor to give back the vessel, which, according to the opinion of the solicitor general, had been rightly seized. Whether you admit my honorable and learned friend's argument or not, they cannot but confess that the conduct pursued was highly inconsistent. The whole thing proved that the course adopted was a wrong one, and that the statement of the captain, when he said he had been deceived and entrapped, was perfectly correct. The case is not at all improved from the manner in which this restoration was effected. It was not pretended that the restoration was made because any unwise or unsound principle had been laid down, but simply because of certain facts which had occurred in connection with this particular vessel. I deny that the ship could be termed a prize under any circumstances, acting as she had done, in the belief of Sir Baldwin Walker and every one at the Cape, for six or seven months as a tender to a man-of-war under a lawful commission. This is a case, I submit, in which the House ought to affirm the resolution of the honorable member for Maldon, by way of taking care that in future the principles of international law shall not be violated, and in order to declare that the doctrine of neutrality shall be observed toward all nations—toward the South and the North—toward Germany and toward Denmark—with impartiality, consistency, and justice.

Mr. J. J. POWELL (Gloucester) said it seemed to him that the right honorable gentleman who had just sat down had concealed behind the exuberant foliage of his speech the barrenness of his answer to the facts and arguments brought forward by his honorable and learned friend the solicitor general. He presumed that those who had listened attentively to the speech of the right honorable gentleman would regard as the most powerful portion of it, that which impugned what the government had never concealed to be a mistake, namely, the seizure of the *Tuscaloosa* on her return to Simon's Bay. The honorable and learned gentleman contended first of all that when the vessel arrived at that port she was duly commissioned, and that we had no right to seize or deal with her. He would ask the right honorable gentleman what authority there was beyond his own statement for the assertion that the *Tuscaloosa*, when she first entered Simon's Bay, had on board any commission whatever? Captain Semmes, who must have known whether such was the case, had not said a single word about it. The government conceded that if she had been a commissioned vessel, and *bona fide* tender to the *Alabama*, she would have had as much right to be there as the *Alabama* herself; but as far as the facts were known to the House and to the country, they all went to show that she was only colorably a tender, and that she was then without any commission. When she first came into Simon's Bay she had her cargo on board and

only two small swivel guns and ten men. He did not profess to know much about naval matters, but he believed that there were few vessels which now traversed the ocean without having a few such arms on board. Every fact, therefore, which had come to their knowledge proved that the Tuscaloosa remained then what she originally had been, a merchantman and a prize. He had read these papers with the greatest attention, and with the greatest respect for the gentleman who had penned them, and he rejoiced to find that the national interests were so well looked after by our officers at the Cape. He ventured to think that if any mistake had been made in the first instance it was to be attributed to the acting attorney general at the Cape, and not to the governor, or any one else. Sir Baldwin Walker said:

"On the 8th of August, the tender Tuscaloosa, a sailing bark, arrived in Simon's Bay, and the boarding officer having reported to me that her original cargo of wool was still on board, I felt that there were grounds for doubting her real character, and again called the governor's attention to this circumstance. My letter and his reply are annexed. And I would here beg to submit to their lordships' notice that this power of a captain of a ship of war to constitute every prize he may take a 'tender,' appears to me to be likely to lead to abuse and evasion of the laws of strict neutrality by being used as a means for bringing prizes into neutral ports for disposal of their cargoes, and secret arrangements—which arrangements, it must be seen, could afterward be easily carried out at isolated places."—*Correspondence*, No. 6, (1864,) p. 1.

He maintained that the view taken by Sir Baldwin Walker was a very sensible one. The attorney general, however, naturally enough, had recourse to *Wheaton*, but interpreted his rules according to the letter instead of the spirit, and gave his opinion on a technical rather than on any broad ground. The vessel was accordingly allowed to leave. Then came the dispatch of the Duke of Newcastle, about which so much had been said. Having received the decision of the secretary of state, Sir Baldwin Walker and the governor of course had no other course left them but to seize the vessel. The honorable and learned gentleman opposite had challenged both the facts and the law in the Duke of Newcastle's dispatch, but he (Mr. Powell) maintained that the facts were correct and the law sound. This was a case, it should be remembered, where, if there was no authority for the law laid down, it was equally impossible to cite any authority against it; and, in his opinion, it would be better for the House, instead of attempting to decide a question with which it was really incompetent to grapple, to wait until it had been disposed of by a proper tribunal. He begged the House to observe that the dispatch did not assert any general principles of law, but was limited to the specific case under consideration.

"With regard," wrote the duke, "to the Tuscaloosa, I am advised that this vessel did not lose the character of a prize captured by the Alabama merely because she was, at the time of her being brought within the British waters, armed with two small rifled guns, in charge of an officer, and manned with a crew of ten men from the Alabama, and used as a tender to that vessel under the authority of Captain Semmes."—*Correspondence*, No. 6, (1864,) p. 18.

The Duke of Newcastle assumed the facts to be as he stated them, and was justified in doing so from the information he had received. No one could doubt for a moment that if the vessel was armed, not *bona fide*, but merely for the purpose of evasion, she did not thereby lose the character of a prize. Then the Duke of Newcastle went on to say:

"I think that the allegations of the United States consul ought to have been brought to the knowledge of Captain Semmes while the Tuscaloosa was still within British waters, and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa's papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of her Majesty's orders made for the purpose of maintaining her neutrality, I consider that the mode of proceeding in such circumstances most consistent with her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under her Majesty's control and jurisdiction, until properly reclaimed by her original owners."—*Correspondence*, No. 6, (1864,) p. 19.

He would not enter into the question whether a correct interpretation of international law was given in the concluding portion of the dispatch, which said that the vessel ought to be retained until properly reclaimed by her original owners. That was a point quite beside the main and substantial question at issue, which was, not what was to be done with the vessel after she had been detained and forfeited, but whether the authorities at the Cape had a right to detain and forfeit her at all. He would not say that a vessel under such circumstances ought not to be given up to her original owner; but he was disposed to think that the forfeiture would inure to the benefit of the Crown, and that the original owner would have little or no right to reclaim the ship. Putting that question, however, aside as immaterial to the main issue, he submitted that all the principles of law were in favor of the assertion that, under such

circumstances, the Crown had a right to detain the vessel. At the commencement of the war, her Majesty had issued a proclamation, forbidding both belligerents alike to bring prizes into our ports. That Captain Semmes was acquainted with that proclamation was proved by some of the facts in this very case. It was significant that Captain Semmes did not bring in the tender with him in the first instance. He left her outside, but mentioned in port where she was. Thus he ascertained whether there would be any objection to the tender being brought in. The authorities at the Cape naturally assumed that Captain Semmes was speaking the truth, and that the tender to which he referred really was a vessel answering to that description, and not one merely fitted up for the purposes of evasion. Consequently, they offered no opposition to her coming in. As soon, however, as they discovered the truth of the matter, that the *Tuscaloosa* was not properly a tender, but was only disguised as one, they ought to have done as the Duke of Newcastle pointed out—prohibited the exercise of any further control over her by the captors, and retained her under her Majesty's jurisdiction. All vessels entered foreign ports only by the courtesy and permission of the sovereign of the country, who had an undoubted right, especially in the time of war, to prescribe the conditions under which ships should be admitted. Any vessel which disregarded or violated the limitations thus imposed offered an insult to the sovereign, and rendered herself liable to punishment accordingly. Could any one doubt that if Captain Semmes had brought the *Tuscaloosa* as a prize into Simon's Bay, and had persisted in entering after having been warned to desist, Admiral Sir Baldwin Walker would have been justified in opening fire, and even sinking both the *Alabama* and the *Tuscaloosa*? Well, then, if he would have been entitled to sink her when force was used, surely he had a right to seize and detain her when fraud, the substitute for force, was resorted to. The honorable and learned gentleman had blended together two things which were totally distinct—the arrival of the *Tuscaloosa* on the first and on the second occasion. "How inconsistent," it was said, "is the Duke of Newcastle! The first time the vessel comes in he says you ought to keep her; and when she returns again and is seized, he orders her to be let go directly." The right honorable gentleman well knew, however, that in the interval between the two visits a great change had occurred in the circumstances of the case, such a change as made what was wrong in the first instance right in the second. The second time the vessel appeared, whether or not she had a formal commission from Captain Semmes or the confederate admiralty, she was a duly commissioned vessel within the case of the *Ceylon*, which had been cited. She had got rid of her cargo; she had mounted several guns, instead of two; she was manned not by ten but by twenty men. In fact, she had become a vessel of war. Where a vessel had become beyond all question the property of the captor, the conduct of the captor might, nevertheless, be such as warranted the forfeiture of the vessel. As to this there was no doubt, and if you wanted an instance of misconduct which justified forfeiture, it was certainly supplied by the entrance of a belligerent vessel into a neutral port in defiance of the proclamation of the neutral government. He wanted to know what, after they had spent the night in discussing this question, the issue was to be? Of course, the House had a right to discuss abstract questions of law if they thought fit, but in doing so they were, in his opinion, travelling beyond their proper functions. What good would result from any discussion of the House on the question? Their decision was just as likely to be wrong as right; but, whatever it was, would the government venture to advise her Majesty upon the strength of it? Would the judges even take judicial notice of it should any case arising out of it come to be tried before them? Certainly not. Instead of applying itself to its proper business, which was legislation, the regulation of finance, the amending of grievances, and the material and political welfare of the nation, this house became something like a discussion hall when it debated abstract questions of law, a decision upon which could answer no good purpose whatever. He submitted that it was most inconvenient for the House to debate such questions; still more to attempt to decide them. He therefore hoped they would not come to any decision on this question; but if they did decide, he hoped the decision would be based on those sound principles of international law which had been laid down by the solicitor general, and which he also had humbly attempted to enforce.

SIR JAMES ELPHINSTONE said that in his opinion it was clear that the *Tuscaloosa*, on her second visit to Simon's Bay, had all the appearance of a vessel of war. She had increased her crew to twenty-five officers and men, and was fitted with all the necessary instruments for the navigation of a large ship. Her armament was such as would have enabled her to capture easily any unarmed merchant vessel; in fact, she was a man-of-war of a most formidable character. Acting on the advice to detain the vessel till claimed by her proper owners, Sir Philip Wodehouse offered the ship to the American consul, who, however, declined to have anything to do with her. Some stress had been laid upon the fact that on the first occasion when she entered Simon's Bay she had a cargo on board, and it was argued that this fact invalidated her pretensions to be considered a vessel of war. Upon this head, however, he begged to call attention to what took place in the Pacific in 1813. In that year the American com-

modore, Porter, of the Essex, having captured twelve British whaling ships, fitted out two of them as cruisers; after re-christening them the Essex Junior and the Georgiana, sent them to cruise on the coast of Chili. Both these vessels were recaptured by the British—the Essex and the Essex Junior—off the harbor of Valparaiso, by the Phœbe, and the Georgiana, on her way to the United States, by the Barossa. She had then on board an armament of fifteen guns and forty men, and a valuable cargo of oil and spermaceti. The owner of the Georgiana claimed to have her restored. Now, here was a case of an armed vessel loaded with property which had confessedly belonged to the former owners of the ship; but the prize court held that she was a national ship, and that, being the prize of the captors, the property found on board no longer belonged to the former owners. The case of the Georgiana seemed to be upon all-fours with that of the Tuscaloosa; she was an armed ship, confessedly loaded with a cargo which belonged to her original owners; yet a prize court held that she belonged to her captors. It had been asked what was the license under which the Tuscaloosa sailed; and the reply was that her license was the commission of the officer who had charge of her, a commission which rendered him perfectly qualified to command her as a ship of war. It was quite clear that the government did not intend to uphold the order by which the ship was seized. But there remained the question, who was to assess the damage which had been done to the Confederate States by the Tuscaloosa having been detained at the Cape, her cruise having been spoiled by the intervention of her Majesty's government? It appeared to him that throughout the whole dealing of her Majesty's government with the Confederate States they had been actuated more by a spirit of hostility than of neutrality. We had acknowledged the Confederate States as belligerents, but we would not acknowledge that they could have a government to direct their movements, and the consequence was that we had not been able to communicate with them upon any of the questions of international law which had arisen between us. He must repeat that it would be a flagrant breach of justice if her Majesty's government did not compensate the Confederate States for the detention of the Tuscaloosa, which had rendered her cruise abortive.

Mr. SHAW LE FEVRE said the question before the House was one of great difficulty, and much better fitted for discussion in a court of law than in the House of Commons; but, at all events, it ought to be treated by honorable members in a spirit of neutrality. There appeared to him to be two questions involved: first, what course should have been adopted in reference to the Tuscaloosa when she went into Simon's Bay for the first time; and, second, what course should be adopted in reference to prizes which might in future come into our ports. After a careful reading of the dispatches, particularly those of Sir Baldwin Walker, he could come to no other conclusion than that arrived at by the Duke of Newcastle, that the Tuscaloosa should, on her first visit, have been detained and handed over to the original owners. He thought that it had been conclusively shown that the Tuscaloosa had not at that time lost her character as a prize, but that her captors had, to some extent, given her the character of a vessel of war, for the fraudulent purpose of enabling her to evade the Queen's proclamation, so as to come into our ports ostensibly as a vessel of war, but really for the purpose of disposing of her cargo, and equipping her as a vessel of war. Subsequent events showed what the intention of her captors had been, as they had disposed of her cargo, and had added to her equipment, doubtless at Simon's Bay; thus effecting the very purpose which it was the object of the proclamation to prevent. A precisely similar case had not before arisen, and, therefore, they could only treat it by analogy; and, perhaps, the closest analogy was that of prizes brought into the ports of a neutral by ships which had been illegally equipped as vessels of war in violation of the laws of the neutral. The earliest cases of this kind arose in 1793, in America, where prizes had been brought in captured by French privateers illegally equipped in American ports. Washington was in doubt as to what course should be adopted with respect to these prizes, which England demanded to have restored to her; and the question was referred to the judges, who refused to enter upon the question on the ground that they had no jurisdiction, and that the question was one for the determination of the Executive. Washington was therefore obliged to take the case into his own hands; he directed the prizes to be restored to their original owners, and afterward introduced the foreign enlistment act, which not only settled the law as to the equipment of vessels of war in their ports, but also gave power to the courts of law to determine questions arising upon prizes coming into their ports. Our own foreign enlistment act, though mainly taken from the American act, contained no clause similar to this last. It was, he thought, most desirable that our courts of law also should have cognizance of such cases. Reasoning from what had occurred in those cases, we ought at first to have handed over the Tuscaloosa to her original owners, on the ground that there had been a violation of our neutrality by the Tuscaloosa in coming into Simon's Bay. There was also another ground upon which this should have been done, a ground not raised by the government nor alluded to in the Duke of Newcastle's dispatch, but one which could not have escaped the notice of our law officers; and that was that the Tuscaloosa was prize to a vessel which had been equipped in our ports in violation of our

neutrality. There was no international law which was more clearly laid down than this, that a prize taken by a vessel equipped in violation of the neutrality of another country, if brought into a port of that country, should be restored to its original owners. Without entering into questions as to the meaning of the foreign enlistment act, he apprehended there could be no doubt that the Alabama had been equipped and manned in violation of our neutrality. The question also arose whether vessels like the Alabama were justified in burning their prizes upon the sea without attempting to send them into port for condemnation. In the days of Grotius, no doubt, a vessel within twenty-four hours of her capture became the absolute property of her captors; but considerable alteration in the law, and especially in the law of England, had taken place since that time. Sir William Scott, in his well-known letter for the information of prize courts in America, said that before a ship could be disposed of by her captors there must be a judicial proceeding and a condemnation of the prize; and in the instructions to our commanders of vessels of war, and in the letters of marque to privateers, it was laid down that when vessels were captured they were to be taken into a court for condemnation; and there were no instructions which warranted their being burnt as soon as seized. This showed that a great change had taken place, and it could not now be considered a usage sanctioned by international law to burn and destroy private property at sea; and consequently, in the consideration of this question, the Alabama's constant practice of burning her prizes ought to be borne in mind. No doubt it might be said that, as between belligerents, there was no law upon the matter; but still, whenever a neutral had the power to interfere to put a stop to such a practice, was it not her duty to do so? Had a country which had no ports into which it could send its ships a right to have cruisers upon the sea capturing and destroying vessels? He thought not; and he was glad to observe that so great an authority as the lord chancellor had expressed the opinion that such practice could not be considered as altogether according to the usage of modern warfare.

[Notice taken that forty members were not present. House counted, and forty members being found present.]

MR. SHAW LE FEVRE. With respect to the course to be adopted in future toward prizes brought into our ports, it was hardly safe to say that all prizes which came into ports belonging to her Majesty should be handed over to their original owners; for ships with prizes, intended to be submitted to the adjudication of a prize court, might be obliged, by stress of weather, or for want of provisions, to enter those ports. In such cases the prizes should not be handed over to the owners unless the vessels which captured them had been equipped in British ports, in violation of the Queen's proclamation of neutrality. But, in all cases, where there was reason to believe that they came in for other purposes than that of going to the ports of their captors for condemnation, he thought they should be detained or restored to their original owners. In common with many other honorable members, he sympathized with the gallantry of the confederates, though he had no sympathy with their cause; but he must say that he had, also, no sympathy for them in respect of vessels like the Alabama, which were equipped, not for fighting, but for lighting bonfires upon the sea by burning private property; and he thought that if her Majesty's government could put a stop to such a practice it became them to do so. They might do much towards effecting this by prohibiting all access to our ports to vessels which were given to this practice, and by detaining their prizes on whatever pretense they come into our ports. By all means in your power, he would say, *Prohibe infandos a navibus ignes.*

SIR JOHN HAY said he should not have risen to take part in the discussion but for one observation made by the honorable and learned member for Reading, (Mr. Shaw Le Fevre); but, before he did so, he must say that her Majesty's government did not deserve any great credit for attempting again a count out after the very disgraceful manoeuvre the other night on the China debate. It is a very easy, and no doubt convenient, mode of getting rid of a disagreeable question, when they found that the feeling of the House was setting strongly against them, to get one of their supporters to move the count out of the House; but he thought that some quieter mode of getting rid of the discussion would have been more consonant with their dignity than resorting to this flagrant abuse of one of the privileges of that House. Having made those remarks, he must say that the honorable and learned member for Reading had advanced some doctrines which he, as a naval officer, must pronounce altogether heretical. He must remind the honorable and learned member that there was a wise distinction between a privateer and a tender. A tender carried with her all the powers and character of the ship from which she receives her commission, and therefore the Tuscaloosa derived her power to navigate the ocean and carry on war entirely from the commission which was borne by the captain of the Alabama. It might be that Captain Semmes was not, in the opinion of the House, the captain of a man-of-war, and, in that case, the honorable and learned gentleman's argument might hold good; but her Majesty's government had acknowledged, through their officers, the commission of the Alabama. He was recognized, for the purposes of war, as the captain of a man-of-war navigating the ocean, and he communicated to the captain of his tender the same full power and au-

thority he exercised as a captain of the confederate navy, and therefore the argument, which the honorable and learned member based upon the supposition that the Tuscaloosa was merely a privateer, entirely fell to the ground. It was quite a new doctrine to him that her Majesty's ships, or the ships of any other power, when at war, were not to sink, burn, or destroy the vessels of the other belligerent power. As to its policy, he would not then inquire; but there could be no doubt that, if war was to be carried to anything like a successful issue, no naval officer would consent to be bound to hamper himself with a number of prizes, which must necessarily reduce the number of his crew, which he required for the purposes of fighting his ship. In such a case it was the duty of every naval officer not to respect the feelings or interests of those who belonged to the captured ships, or the advantages which might accrue to himself and crew by retaining those prizes and bringing them into port to be condemned by a prize court, but to sink, burn, and destroy them on all occasions when the public service demanded it. Speaking for those officers on foreign stations who had been the victims of the extraordinary and ambiguous dispatches of the government, he trusted they would be more explicit for the future, and not seek thereby, as had been the case in this instance, to shirk the responsibility, and cast it upon their officers. He could assure the House that naval officers endeavored to discharge their duty in spite of the mistaken opinions of the honorable and learned member for Reading, and others in that House, who thought it their duty to state such heresies at home.

Mr. NEATE said that although the proposal to count out the House had proceeded from that side of the House, there was no reason to impute it to the government. Of those who rushed in to make the House, a large majority belonged to the government side, and all through the debate there had been two members on the government side to one on the other. He thought there would not be much difference of opinion that the Tuscaloosa ought to have been detained at the outset if the Duke of Newcastle's dispatch had arrived earlier. When the Tuscaloosa was first brought into Simon's Bay she was brought in in fraudulent violation of our neutrality. She was a ship of five hundred tons, and she was brought into the bay commissioned as a vessel of war, with ten men on board. He would ask the honorable and gallant gentleman, (Sir John Hay,) if he had the honor and responsibility of commanding her Majesty's fleet, whether he would send such a ship to sea with less than one hundred men? But it had been said that upon her return she was, to all intents and purposes, a vessel of war. But what was her state then? Why, she had twenty men and three guns on board, one hundred cartridges, six twelve-pounder shot, and twelve revolver pistols. Sir Baldwin Walker said he had learnt since the departure of the Alabama and her so-called tender that overtures were made to some parties in Cape Town to purchase the Tuscaloosa's cargo of wool. Would the honorable and gallant gentleman opposite think a transaction of that kind the business of a vessel of war? He was not entirely satisfied with the vague and general language at the end of the Duke of Newcastle's dispatch. It would have been desirable that there should have been a little more precision. But they had been told that that defect had been remedied, and therefore he submitted that no injustice had been done.

Mr. MONTAGUE SMITH said he agreed with his honorable and learned friend the solicitor general, that in dealing with questions of this kind the House should approach them in something like a judicial spirit. He also agreed with him that there was some inconvenience in the House of Commons taking up questions of international law, but it had always been the practice, both of that and the other House of Parliament, to express an opinion upon such questions. And when the solicitor general expressed a hope that the votes of honorable members would be given that evening without any party spirit, he entirely sympathized with him, but he ventured to say that in that case his honorable and learned friend himself must vote in favor of the resolution. His honorable and learned friend had made a most gallant defense of the instructions sent out, probably by his own advice, to the colony. He (Mr. M. Smith) was quite willing to admit the difficulty, which none but a lawyer could properly appreciate, in which the law officers of the Crown would feel themselves placed in such a case. They would have to apply principles not to be found in the ordinary current of authorities, but in books of international jurisprudence which required some research, and to apply them to cases presenting circumstances of novelty and difficulty. But when he was asked to express an opinion upon the dispatch of the Duke of Newcastle, and when his honorable and learned friend the solicitor general in such bold and defiant language laid it down that nothing in that dispatch could be said to be wrong in point of law, in that case a duty was cast on honorable and learned members on his (Mr. M. Smith's) side of the House to state what opinion they had formed on the subject. Now there were three points, in the question before the House, in which he felt bound to state his opinion that the government had gone wrong. The first point was whether the Tuscaloosa, when she first came into Simon's Bay, ought to have been treated as a prize, or as a ship of war commissioned by confederate authority. The government decided that she was to be treated as a prize and not as a ship of war, and he thought in that decision the government were wrong. The second point was whether, supposing she were a prize, the admiral on the station was entitled to detain her for the purpose of having her handed over to her original owners. The home government

thought that she should have been detained until claimed by the original owners. That decision appeared to him (Mr. M. Smith) to be utterly erroneous in point of law, and to be a clear misconception of all the authorities upon international law. The third point was whether, when the *Tuscaloosa* came in the second time and was seized, and when the home government felt it necessary that she should be restored to those from whom they had taken her, they acted rightly or not. He thought that even in this last case the government had mistaken their course, for they had not the courage and right feeling to order her to be restored upon the proper grounds, but they put the restoration upon the narrow, mistaken ground that because she had been once in the bay, and had been allowed to sail, she ought to be restored. The two former errors were mistakes in point of law; the latter was a mistake in point of policy, and was perhaps the most serious of all, because the government, more than their law officers, were responsible for it. With reference to the first question, whether the *Tuscaloosa* ought in the first instance to have been treated simply as a prize, brought in in contravention of the proclamation, or as a ship of war, he agreed with his honorable and learned friend to a certain extent that it was a question of fact, and that to some extent the *bona fides* of the conversion might have been inquired into. It was clear if a ship were brought in without any of the insignia of a vessel of war, those who had to exercise the Queen's authority might take it upon themselves to say, "This is in clear contravention of the Queen's proclamation—it is a mere deception intended to be practiced upon us." But on this question the colonial authorities appeared to have formed a correct opinion, both on the facts and the law. The question was whether the *Tuscaloosa* was a ship of war or a tender, and, as such, entitled to the privileges of a ship of war; or whether she went in to deliver her cargo and make a profit to the captors. He thought that any one who read the papers that had been laid before the House on this subject, without party spirit, must come to the conclusion that the *Tuscaloosa* had been made a *bona fide* tender to the Alabama, and, therefore, was as much a ship of war as the Alabama herself. One great test of a ship of war was, had she a commission? The Duke of Newcastle, in his dispatch, omitted altogether the circumstance that she had been commissioned by the commander of the Alabama. There could, however, be no doubt that the fact was known to Sir Baldwin Walker, for he wrote to the governor on the 7th of August saying:

"Captain Forsyth has informed me that the Alabama has a tender outside, captured by Captain Semmes on the coast of America, and commissioned by one of the Alabama's lieutenants."

From beginning to end the fallacy that ran through the correspondence and influenced the decision of the government was that, because the *Tuscaloosa* was not condemned as a prize, she was not to be treated as a ship of war. This was in the minds of the American consul, of the legal advisers of the Crown, and of the Duke of Newcastle. Was she then a tender? Why, Sir Baldwin Walker himself said she was; it is true she had a small crew, but a tender to a man-of-war did not carry as many men as the man-of-war herself—she was simply what her name indicated her to be, an attendant upon a man-of-war. Could there then be any doubt that the Alabama was a ship of war and was the solicitor general entitled to say that it was a mere sham to take the *Tuscaloosa* into Simon's Bay as her tender? On what ground did the American consul desire that she should be detained? Why, on the very ground that she was a warlike vessel. On the tenth of August he wrote:

"An armed vessel, named the *Tuscaloosa*, claiming to act under the authority of the so-called Confederate States, entered Simon's Bay on Saturday, the 8th instant. That vessel was formerly owned by citizens of the United States, and while engaged in lawful commerce was captured as a prize by the Alabama. She was subsequently fitted out with arms by the Alabama to prey upon the commerce of the United States, and now, without having been condemned as a prize by any admiralty court of any recognized government, she is permitted to enter a neutral port, in violation of the Queen's proclamation, with her original cargo on board. Against this proceeding I hereby most emphatically protest, and I claim that the vessel ought to be given up to her lawful owners."

What stronger evidence could there be that she was a vessel of war than this statement of the American consul? And as to the argument that the vessel had not been condemned by any prize court, and therefore remained the property of her original owners, that could not be admitted for a moment. No doubt, as between neutrals, according to some modern authorities, the property was not changed by the capture for all purposes, but, as regarded belligerents themselves, when the capture was complete, the dominion and property passed to the captors. The fact that the *Tuscaloosa* had a commission, was, to a great extent, decisive of her character as a public ship of war. The case of the *Georgiana*, decided by Lord Stowell, was almost exactly similar to that of the *Tuscaloosa*; and both the American and English lawyers bowed to the authority of that learned judge. Lord Stowell said:

"It has been usual for the court to look, in the first place, for the commission of war, because where that is found nothing more is wanted."

In answer to the argument that it was the case of a commission from an officer of a single ship, Lord Stowell said:

"Take it to be as stated, that it is the act of an officer commanding one ship only, the distinction does not appear to me to be very material. When it has been held that the commander of two or three ships may sufficiently 'set forth to war,' it is not going much further to say that the commander of a single ship may possess the same authority."

He had not heard it asserted that the commission given to the *Tuscaloosa* was not a real commission, nor was it disputed that the captain of the *Alabama* was competent to give such a commission. Having, as he (Mr. M. Smith) hoped, established the fact that she was a ship of war, then came the question, how she ought to have been dealt with. It was no answer to say that the Confederate States had not been recognized, because the government of this country had conceded to the Confederate States belligerent rights. There could be no degree in belligerent rights, for once given to a state, they were possessed by it fully and entirely. They were bound to have treated the *Tuscaloosa* not as a prize, but as a ship of war of the Confederate States. As he had already said, considerable allowance must be made for the difficulties under which the law officers labored; but this was a question of fact, and there was ample evidence on which they could have grounded their opinion; and upon a question of international law the governors of their colonies were entitled to be heard, and their opinions were entitled to some respect. In this case, too, the colonial governor acted on the advice of his law officers; and he ventured to say that in this case the colonial law officers were right; and, therefore, he thought his honorable and learned friend the solicitor general assumed an amount of dignity to which he was not entitled when, with great condescension, he said the law officers here did not throw blame on the law officers of the colony. In fact, the law officers of the colony had been right throughout, and the Duke of Newcastle's dispatch was wrong throughout. Then, supposing the ship was a prize, how was she to be dealt with? He (Mr. M. Smith) held that the government had no right to detain her, and to hand her over to the federal government, or to her original owner. His honorable and learned friend was determined to support the dispatch throughout, but he confessed he was rather surprised at his honorable and learned friend saying there was nothing wrong in the dispatch, except that it was not sufficiently explicit. That might be a convenient mode of getting rid of a dispatch, that was wrong in point of law, but he should have thought that that was the last thing for which this dispatch could be found fault with. It seemed to him so explicit that no one could mistake it. It was so explicit that the governor felt bound to act upon it, and did act upon it, against his own convictions. Like a former memorable dispatch of the noble duke, it was too peremptory; it left no discretion to the governor as to what he was to do with the vessel, supposing she were a prize; indeed, nothing could be more explicit or more to the point, and the admiral acted on it most effectually by turning her own crew out of the *Tuscaloosa*, and placing a crew of British man-of-war's men on board. His honorable and learned friend contended that a right view of international law had been taken, but he must say he thought differently; it seemed to him entirely novel and fraught with the most dangerous consequences; because, if governors of our colonies were to act on the law laid down by the Colonial Office in this case, we should be in danger of war every day of our lives. His honorable and learned friend had adverted to what had occurred in another place. In the debate so referred to, a noble lord high in office, and particularly interested in this transaction, observed that the dispatches written by the Duke of Newcastle went beyond what the law officers advised, and that the law officers entertained serious doubts—

The ATTORNEY GENERAL, Earl Russell said the law officers declared that it was a matter for serious consideration.

Mr. MONTAGUE SMITH said he quite accepted the interpretation that it was "a matter for serious consideration," but the solicitor general went much further than this, and treated the question as beyond doubt, and that all that had been done was perfectly right. Surrounded as they were by eminent politicians, he could not help thinking that the law of his honorable and learned friends was somewhat warped by the politics and exigencies of the moment. Away from their present associations, it was impossible to have two better opinions; but, unconsciously to themselves, no doubt, their views had been distorted by their position. His honorable and learned friend had referred to instances in which a neutral power was entitled to seize a ship in the hands of a belligerent when brought into its own ports; but in the authorities from which those instances were drawn, including the excellent treatise of the Queen's advocate on "international law," he must have seen that they were all exceptions founded on the fact that the original capture was bad in law. There was no authority justifying the neutral power in manning the prize from one of its own ships of war, in such a case; and had the confederates been a strong power, no doubt they would have resented that proceeding as an act of war. If the same step had been taken with a nation able to enforce its own views on international usage, he believed the "serious doubts" of the law officers would still have remained. What was such an act, in effect, but making

the Queen a recaptor for the federal government? In explanation of the instructions sent out to the Cape, altering the decision of the colonial authorities, both as to the law and the facts, and giving explicit and arbitrary instructions for the future, his honorable and learned friend urged that it was not then foreseen that the Tuscaloosa would return. If not, then these instructions were a mere waste of harmless powder. But, unfortunately, the Tuscaloosa did come again and was seized. His honorable and learned friend could not have been as confident then as he was now, because no one could read the dispatches which were subsequently written, without seeing that, when it became known that their instructions had been acted on, and the Tuscaloosa, in fact, detained, the government were in a great fright and endeavored to recall what they had done. The colonial authorities were then told to restore the ship, and when they inquired the grounds for so doing, were supplied with very scanty information and left utterly without guide for their future action. The vessel, in truth, was to be let go because it was not expedient to keep her. But she was detained for her original owner; how, then, to be consistent, could the government let her go without his consent? It would have been more generous to the colonial authorities to have said that they were right in their original opinion, and therefore the ship must be released; and it would have been more generous to the Confederate States if her liberation had been accompanied by some expression of regret for what had occurred. Such an act from a strong power to a weak one could not have been mistaken, and might have been gracefully rendered. He thought it unfortunate that Lieutenant Low should have cause to make use of such strong expressions as that he had been "misled" and "entrapped." He admitted that there were difficulties in maintaining a strict and impartial neutrality; but the House and the country had a right to expect that our neutrality, more especially in a contest between a weak country and a strong one, should, if rigid, be at the same time impartial.

Mr. DENMAN said that if the discussion of questions of this sort in that House was attended with inconveniences, still greater were those which would arise from rash votes upon questions of great international importance. He hoped that in the present instance no vote would be come to upon the resolution before the House, because either its adoption or rejection could not fail to be productive of mischief. If it was carried, there would be danger, not only that it might be quoted against us at some future time, but that a wrangle would take place between our own and some foreign government as to what it was that the House had affirmed. If it was rejected, it was certain that on some future occasion either our own or a foreign government would appeal to it as affirming positively as good and legal every word which was contained in the dispatch of the Duke of Newcastle. He, therefore, trusted that the resolution would be withdrawn. Passing to the subject of this correspondence, he apprehended that nothing could be clearer than that the question as to whether the Tuscaloosa was a prize or a ship of war was not a pure, unadulterated question of law, but a question of law so entirely depending upon facts that you could not have any better judge in such a manner than a naval officer like Sir Baldwin Walker, who had seen the vessel on the spot, and who understood her character, her equipment, and all about her. The evidence of experts was constantly admitted in our courts of law, and in this instance there was no better authority than—there was, in fact, no competent authority except, Sir Baldwin Walker. And was there any authority to the contrary? Not a bit. Even the honorable and learned gentleman the member for Truro, (Mr. Montague Smith,) had abstained from saying that he did not accept the authority of Sir Baldwin Walker. [Mr. MONTAGUE SMITH: I said distinctly that I thought she was a ship of war.] He was aware that it was his honorable and learned friend's opinion that she was a ship of war; but that opinion was held entirely against Sir Baldwin Walker's better judgment. All those who had in this debate opposed the view taken by Sir Baldwin Walker had relied upon passages culled from text-books and upon decisions by Lord Stowell and others; but those decisions, as presented by the honorable gentlemen themselves, did not make out the proposition that the mere existence of the commission was enough to make the vessel a ship of war, and that you were not to look behind that commission and go into other facts, and examine whether the vessel really was a ship of war or an uncondemned prize. On the contrary, in the case of the Georgiana, his honorable and learned friend quoted words which showed clearly that the judgment of the court was not founded upon the mere fact that there had been a commission, but upon other facts which were of great importance. ["No, no."] The honorable and learned member for Truro cited the strongest case, that of the Ceylon, which had been quoted in the course of the debate as to the power of a captain to commission another ship as a tender; but even there the words were that the officer who received the commission might set the vessel forth as a ship of war; and there was nothing in the decisions which established that where there was nothing but a commission and an officer put on board the vessel, you were, in the presence of all facts and in spite of all arguments to the contrary, to consider the vessel a ship of war. In the case of the Georgiana there had, as stated by the honorable member for Maldon, (Mr. Peacocke,) been put on board ten additional guns and a fighting crew of sixty men, and Lord Stowell decided that the officer had sufficiently "set her forth for war."

Now, in the case of the *Tuscaloosa*, Admiral Walker, in effect, said, "I, who am a naval officer, and who know what a ship of war and also what a tender is, am perfectly certain that this vessel was not a ship of war, but a merchant vessel, with her cargo on board." That, he contended, was a statement worth a hundred opinions of legal gentlemen in that House who took a contrary view, who could not have the same knowledge of the character of a ship, and who, moreover, had never set eyes upon this ship. But the truth was, that questions of international law were perpetually arising upon which no decision had been previously given, and this case of the *Tuscaloosa* was an exceptional case. Was there to be found among the records of past cases any case standing on all fours with this? In such a case what were they to do? They could only look to analogy and reason, and submit to be governed by those two principles; nor was it possible, he thought, to deny that the analogy drawn by his honorable and learned friend, the solicitor general, was a good one. The real principle involved in the question was, that the neutrality of this country had been violated, and that the parties by whom it had been violated had no right to turn round and demand restitution for the results of their own wrong. That was a true principle, which would be admitted by all. With regard to Captain Semmes, it was stated that he had pledged his own truth to the fact that this ship was a tender, and that the British authorities ought to have accepted his statement as a verity. Sir Baldwin Walker had no doubt said that he saw no reason to dispute the accuracy of Captain Semmes's statement. Now, a considerable fallacy lay concealed under this argument. Captain Semmes was a commissioned officer of the Confederate States. It was his duty, if he found the British government willing to let him treat this vessel as a tender, to run the gauntlet through all our arrangements. But Captain Semmes had really no authority for calling this vessel a tender. He (Mr. Denman) did not mean to impute anything dishonorable to Captain Semmes in the conduct he had pursued. There was little doubt but that Captain Semmes thought that by putting a commissioned officer on board and by calling the vessel a tender, he actually made her what he called her; but then he had done an act which was no less an evasion of our neutrality. The attorney general at the Cape, he might add, in giving his opinion on the matter, had cited a passage from Wheaton, which was not applicable to the case; but the governor had, nevertheless, done quite right in acting on that opinion; while with respect to that portion of the dispatch of the Duke of Newcastle which had been complained of, it was quite clear that it was not the result of the deliberation of the law officers of the Crown, but had been added in the urgency of the moment by the duke himself. If that were so, the House would, he thought, hardly deem it desirable that when the subject was said to be under the consideration of the law officers of the Crown, they should bind themselves and the country in all future wars to the statement that the particular part of the dispatch to which he referred was at variance with the principles of international law. With respect to the third point raised by the honorable and learned member for Truro, he maintained that, as gentlemen and as Englishmen, the heads of the Colonial Office could not have acted otherwise than they did after receiving intimation that the *Tuscaloosa* had been detained. The letter of Mr. Low, the officer in command of the vessel when Captain Semmes was absent, had been quoted to the House. The writer spoke of having been entrapped. When the ship went away the first time, she had the wool and the skins on board, and the two small guns which Admiral Walker said it was ridiculous to call an armament. She went away as a regular uncondemned prize. When she returned again she certainly had more the appearance of the tender of a man-of-war, and, therefore, if they were not entitled to stop her on the first occasion, she had a right to consider that she would not be stopped on the second. Whatever, therefore, their opinion might have been as to the right of detaining her on the first occasion, it would have been a wrong thing, and, he would add, a shabby thing, for the Colonial Office to detain her on the second occasion. However, she was then seized, owing to a misconception of his instructions on the part of Sir Philip Wodehouse. The dispatch of the 4th of November never told him that he was to shut his eyes to altered circumstances and act in a blindfold manner. There was to him something like the exhibition of a little pique in the letter of Sir Philip Wodehouse, stating that the commander of the *Tuscaloosa* not unnaturally complained of her having been seized after being recognized on the previous occasion as a ship of war, but that that was manifestly nothing more than the inevitable result of the overruling by the home government of the decision of a subordinate officer. He thought it was rather the natural result of Sir Philip Wodehouse's not having—as he did on the first occasion—consulted his attorney general, who would most probably have told him that he was estopped from detaining the vessel. The home government then sent out another dispatch cancelling the detention. The honorable member for Maldon (Mr. Peacocke) had complained that this dispatch assigned no special reasons for that course being taken. To him (Mr. Denman) it seemed that the reasons assigned were very special. It was stated that the decision taken was not founded on any general principle, but on the peculiar circumstances of the case, among which one was, that she had been called the tender of a ship of war, when really she was merely an uncondemned prize; nevertheless, she had been allowed

to enter and to depart from the Cape, by which her commander might naturally have thought that he could go there again. The government, therefore, came to the conclusion that she ought to be released with a fair warning to her commander and to the captain of the Alabama that ships of war could not be permitted to bring their prizes into British ports, and that it rested with her Majesty's government to decide to what vessels that character belonged. The dispatch concluded by expressly disclaiming, in kind and courteous terms, the intention to censure, in any degree, the course pursued by Sir Philip Wodehouse on a question of difficulty and doubt. Now that the Duke of Newcastle had retired from office, he thought it was as ungracious as it was unnecessary and improper, and even mischievous, for the House to put on record a resolution which would be quoted against them as meaning something which it did not mean; and for the sake of the country, for the sake of that which they would all allow her Majesty's government desired in spirit to preserve—namely, an honorable neutrality in our relations with America—he trusted that his honorable friend would not force the House to a vote on that occasion.

Mr. BOVILL said he concurred in thinking that a vote on this subject might lead to a mischievous result if it should affirm a principle of international law which was not correct. The country had been placed in a state of humiliation by the seizure of a vessel belonging to a weak state, and our being afterward obliged to surrender the vessel so seized; and whilst the instructions which had been given remained unrepealed, what had occurred might occur again; and subject us to further humiliation. While the instructions of the 4th of November, issued to the government of the colonies, remained uncanceled and unaltered, other cases might occur which would be equally mischievous; and although he agreed that that House was not a proper tribunal for the discussion of questions of international law, yet the attention of Parliament must be called to the subject, and an attempt made to put the matter upon a proper footing. In cases of this kind there was always a difficulty in ascertaining the precise facts to which the law was to be applied; and a dispute had arisen as to the true character of the *Tuscaloosa*. She was originally a federal merchant vessel, and was captured by the confederate vessel of war, the Alabama. On her capture an officer in the confederate navy was placed on board with a complement of men of the Alabama, and from that time she had been continuously employed in the service of the Confederate States. The only ground on which the American consul claimed the restitution of the vessel was, that having been fitted out as a vessel of war and a tender of the Alabama, she was allowed to enter a neutral port, not having been condemned as a prize in any admiralty court. The character of the vessel, however, was placed beyond all dispute by the demand made by Mr. Graham on Sir Philip Wodehouse, wherein he stated that she was subsequently fitted out with arms by the Alabama "to prey on the commerce of the United States." Every person capable of forming an opinion arrived at that conclusion. Sir Baldwin Walker saw the vessel and communicated with her commander, and he came to the conclusion that she ought to be treated as a vessel of war. If honorable members would refer to the correspondence they would see that an officer and ten men of the crew of the Alabama were put on board, and it was admitted that she had been fitted out "to prey on the commerce of the United States." The conclusion came to by Sir Philip Wodehouse, by the acting attorney general at the Cape, and by the consul of the United States, was that the vessel was fitted out for that purpose. If all parties came to the same conclusion, how was it that the Duke of Newcastle was entitled to consider the vessel to possess a character which all admitted she had not—the character of a merchant vessel? But all were overruled, and notwithstanding that every one said that this was to be considered a vessel of war, his honorable and learned friend the solicitor general said that to consider this as a vessel of war was a mere sham. The only allegation of weight on the other side was that she had a cargo of wool on board; but it never could be made a question, in the face of the papers, whether she was a vessel of war or not. He would challenge his honorable and learned friend, the attorney general, to say that she had not this character simply because she had not been condemned as a prize. It would be a most serious thing if the House should be called on, upon the authority of the law officers of the Crown, to affirm the correctness of the instructions sent out by the Duke of Newcastle, and within a few days afterward to find on the table amended instructions on which all colonial officers were in future to act. But the misfortune was that those instructions being sent out on the 4th of November, a dispatch of the 10th of March of the present year placed the release of the vessel on entirely different grounds; to this hour no alteration had been made in the instructions, and if another merchant vessel which had been taken as a prize, fitted out by the Confederate States, and placed in charge of an officer of their navy, found its way to Simon's Bay, what course would Sir Baldwin Walker take with regard to it? The instructions of the 4th of November remained uncanceled, and he would only have one course to pursue. He had no alternative but to act on those instructions. He acted on them and seized a vessel of war. Could anything be more humiliating? Instructions went out; contrary to the opinion of the officers of the colony they were acted on; and when the government could not retain their position they were glad to

put forward some excuse for giving up the vessel by admitting that the captain had been misled and entrapped. Hence the necessity for the House taking notice of the subject. If the vessel was not of the character which had been supposed, then she was a vessel of war. It was not necessary to be a vessel of war that she should be equipped as a large vessel would be. Even a launch under the command of a midshipman, detailed for a cutting-out expedition, was a vessel of war. But even supposing that she could be treated in any other character, then she must be a prize. Then she was a prize taken lawfully, and the property in her had passed to the captors, and no adjudication was necessary. The solicitor general said that the vessel, passing through neutral waters, became liable to seizure, and to be handed over to the original owners. He (Mr. Bovill) maintained there could be no more false proposition, and he should be surprised, indeed, if it were put forth by the attorney general. The country had a right to expect a clear statement of the law, because they were told that the subject had been under the serious consideration of the government. The solicitor general had referred to captures in neutral waters. Everybody knew that such captures were illegal if the neutral state interposed; but in the case of a captured vessel passing within neutral territory, there was no power to restore the property to persons who had ceased to be the owners by the law of nations. He would not enter further into the argument, but he thought it would have been better if more candor had been shown. It had been admitted that the instructions issued had gone beyond what had been sanctioned by the law officers of the Crown, and he trusted that in future instructions of a different character would be issued.

The ATTORNEY GENERAL, Sir, there are two principal questions as to which, if I rightly understand the motion of the honorable gentleman opposite, it is intended by this vote to ask the House to pronounce that this dispatch contains doctrines at variance with the principles of international law. At all events, in the course of the debate two questions have been raised and discussed on one side or the other. The first proposition laid down in the dispatch is, that the vessel called the *Tuscaloosa* did not lose the character of a prize captured by the *Alabama* merely because she was at the time of being brought into British waters armed with two small rifled guns, in charge of an officer, and manned with a crew of ten men from the *Alabama*, and used as a tender to that vessel, under the authority of Captain Semmes, having nothing to give her a warlike character except those circumstances. The first question is, whether that proposition is contrary to the principles of international law. The second question is, whether the final proposition in the dispatch is of that character. I must express my unfeigned surprise at the manner in which the honorable and learned member for Guilford (Mr. Bovill) has dealt with the facts bearing upon the first of these two propositions. I had hoped that all who took part in this debate would confine themselves to the real facts, and there was no member from whom I should less have expected a miscarriage in that respect than from my honorable and learned friend. But when my honorable and learned friend gravely rises and gravely tells the House that every authority at the Cape, Sir Baldwin Walker as well as others, had agreed in pronouncing this vessel to be a ship of war, and entitled to be recognized in that character, I am placed in the dilemma of supposing either that he has not read the papers, or that— which, of course, I do not suppose—having read them, he meant to misrepresent them. ["Oh!"] The house shall judge whether I have reason for saying so, and I must also correct an error into which, I am sure by accident and involuntarily, my honorable and learned friend the member for Truro (Mr. Montague Smith) has fallen. He said, in the course of his able speech, to which I listened with much attention, that Sir Baldwin Walker had expressed an opinion that this ship was duly commissioned as a ship of war. I will show the House that a more complete mistake could not be made. What are the facts? In the first place, the letter to which the honorable member for Truro referred does, indeed, use the word "commission," which is the source of his mistake; but how do the subsequent papers correct the erroneous ideas suggested by its use? Under the date of the 7th of August, Sir Baldwin Walker, writing to the governor of the Cape, says:

"Captain Forsyth having informed me that the *Alabama* has a tender outside captured by Captain Semmes on the coast of America, and commissioned by one of the *Alabama's* lieutenants." ["Hear, hear!"]

The honorable and gallant gentleman opposite, (Sir John Hay,) may have a better idea of these words than myself, but it seems to be, that of one of the lieutenants of the *Alabama* granting a commission. ["Oh!"] I can only say that it appeared ultimately that there was no commission in the proper sense of the word. I read the words as set down by Sir Baldwin Walker, "commissioned by one of the *Alabama's* lieutenants," and I defy anybody to define from them what sort of a commission this represents. ["Oh!"]

Sir JOHN HAY said that, having been personally alluded to by the honorable and learned gentleman, he wished to remark that when it was said that a captain at Portsmouth had commissioned one of her Majesty's ships, it did not mean that he had conferred that commission upon himself.

The ATTORNEY GENERAL. The honorable and gallant gentleman interprets those words as equivalent to "under the command of one of the Alabama's lieutenants." I believe that is so, and the sequel shows that when the matter came to be more carefully considered, the element of a commission was eliminated, and there is nothing to be founded on that consideration. In the first place, Sir Baldwin Walker having requested the opinion of the colonial law officers, obtained that opinion, and the House will observe the important consequences which followed from it, as expressed in Sir Philip Wodehouse's letter of the 8th of August to Sir Baldwin Walker, inclosing the opinion of the acting attorney general:

"I shall take care to submit this question to her Majesty's government by the next mail, but in the mean time I conclude that your excellency will be prepared to act upon the opinion of the attorney general in respect to any vessels which may enter these ports in the character of prizes converted into ships of war by the officers of the navy of the Confederate States."—*Correspondence*, No. 6, (1864,) p. 3.

I confess that was a somewhat alarming proposition, as it would suggest to the officers of the Confederate States navy a very simple and easy mode of escaping the provisions of her Majesty respecting the bringing prizes into her ports by putting them into the position of the Tuscaloosa, and calling them ships of war, and introducing them into our ports as acknowledged in that character. Sir Philip Wodehouse treated that as a conclusion which naturally followed from the opinion of the colonial attorney general; and he said that he should take care to submit the question to her Majesty's government. But what was the effect of that opinion on the mind of Sir Baldwin Walker, who has been treated by my honorable and learned friend as among those who have pronounced this vessel to be a ship of war? Sir Baldwin Walker having for the first time, through his own officer, obtained true information of the real facts, wrote on the 16th of August to this effect:

"The vessel in question, now called the Tuscaloosa, arrived here this evening, and the boarding officer from my flag-ship obtained the following information: That she is a bark of five hundred tons, with two small rifled twelve-pounder guns and ten men, and was captured by the Alabama on the 21st of June last, off the coast of Brazil; cargo of wool still on board. The admission of this vessel into port will, I fear, open the door for a number of vessels captured under similar circumstances, being denominated tenders, with a view to avoid the prohibition contained in the Queen's instructions; and I would observe that the vessel Sea Bride, captured by the Alabama off Table Bay a few days since, or all other prizes, might be in like manner styled tenders, making the prohibition entirely null and void. I apprehend that to bring a captured vessel under the denomination of a vessel of war she must be fitted for warlike purposes, and not merely have a few men and two small guns put on board her (in fact, nothing but a prize crew) in order to disguise her real character as a prize."—*Correspondence*, No. 6, (1864,) p. 3.

My honorable and learned friend must have overlooked that dispatch. Then what does Sir Baldwin add?

"Now this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes, and her armament and the number of her crew are quite insufficient for any services other than those of slight defense. Viewing all the circumstances of the case, they afford room for the supposition that the vessel is styled a 'tender' with the object of avoiding the prohibition against her entrance as a prize into our ports, where, if the captors wished, arrangements could be made for the disposal of her valuable cargo, the transshipment of which, your excellency will not fail to see, might be readily effected on any part of the coast beyond the limits of this colony. My sole object in calling your excellency's attention to the case is to avoid any breach of strict neutrality."—*Correspondence*, No. 6, (1864,) p. 3.

It is not upon the papers, but we know, as a matter of fact, that what Sir Baldwin Walker apprehended about the cargo actually happened. We know that when the Tuscaloosa left the Cape she went to Angra Pequena, and deposited her cargo of wool and skins on the rocks of an island, having previously, while in the waters of the Cape, made such an arrangement that she was followed by the colonial ship Saxon, which took in the cargo for the purpose of disposing of it for Captain Semmes in the Cape colony, an enterprise which unhappily resulted in loss of life, and in the capture of the Saxon by the Vanderbilt. The real question is, whether that is not a mischief of the most serious character which, if permitted, would place it within the power of any captain of the federal or confederate navy, by an easy ruse, to set at nought and violate and trample under foot with contempt the order made by the British Crown for the preservation of British neutrality. If any opinion can be more strongly expressed than another, it is that of Sir Baldwin Walker, and I agree with my honorable and learned friend the member for Tiverton, (Mr. Denman,) that this matter of fact is one of which Sir Baldwin Walker was a far better judge than all the lawyers in the world. It was his conclusion, from the ascertained facts concerning the Tuscaloosa, that the character assumed of a ship of war was not real, but feigned, and that to recognize it would have the effect of enabling anybody to laugh at her Majesty and set her prohibitions within

her own territory at defiance. What was the result? So much impressed was Sir Philip Wodehouse with the force of these observations, and with the authority from which they proceeded, that he thought it necessary to refer the question once again to the acting attorney general of the colony. I wish to speak with the utmost respect of the colonial attorney general. I have had more opportunity than the House would have, from the simple perusal of these papers, of knowing that he is a most able, upright, and excellent public servant. He exercised his judgment to the best of his ability upon the question put before him. If he was in error—and it is not for me to do more than submit my view upon that point to the House—he is not to be blamed for it, for it was one into which he fell because he was called upon to determine a most difficult question under circumstances which precluded him from having full and accurate information. The House will understand, therefore, that not a word I say is intended otherwise than most respectfully toward that learned person. I believe his first opinion was based upon an assumption of facts which, if correct, would probably have justified it; but I must take the liberty respectfully of saying that the propositions contained in his second opinion, which was given on the 10th of August, 1863, are propositions which I think are most dangerous and erroneous. He was evidently misled by the error of supposing that the passage he had referred to in Wheaton was applicable to this case. Of course you may reason by analogy from one thing to another, but I shall show that the passage in Wheaton, cited by the colonial attorney general, and the authorities referred to in this debate are quite beside the mark, relating to a subject of an entirely different character. What were the conclusions drawn by the colonial attorney general from those authorities? They are stated in a dispatch of the governor, dated August 10th.

"The information given respecting the actual condition of the Tuscaloosa is somewhat defective; but, referring to the extract from Wheaton transmitted in my last letter, the attorney general is of opinion that if the vessel received the two guns from the Alabama or other confederate vessel of war, or if the person in command of her has a commission of war, or if she be commanded by an officer of the confederate navy, in any of these cases there will be a sufficient setting forth as a vessel of war to justify her being held to be a ship of war."—*Correspondence*, No. 6, (1864,) p. 4.

So that the colonial attorney general was of opinion that though the Tuscaloosa should have no commission, though she should not even have an officer of the confederate navy on board, yet if her two guns had been received from the Alabama, that was a good reason for calling her a ship of war. He was also of opinion that though she should have no commission or no guns, yet if she were commanded by a confederate officer that was enough. I am bound to say that I think his opinion was founded upon a complete misconception of the law. The authorities to which he referred—although I admit he discharged his duty to the best of his ability and judgment—misled him, because he read them in a text-book, was not able to make himself acquainted with the cases on which the passages he cited were founded, and did not observe how special and limited was their bearing upon the question before him. Let the House mark what was the result. The governor, who of course thought it his duty to act upon the opinion of the attorney general, communicated that opinion to Sir Baldwin Walker; Sir Baldwin did not change his own original opinion, but of course he had to apply the law of the attorney general to the facts of the case. Accordingly, on the 11th of August he writes:

"I have the honor to acknowledge the receipt of your excellency's letter, dated yesterday, respecting the confederate bark Tuscaloosa, now in this bay. As there are two guns on board, and an officer of the Alabama in charge of her, the vessel appears to come within the meaning of the cases cited in your above mentioned communication."—(P. 4.)

There were three cases put: first, guns put on board by a confederate vessel; second, a commission; third, an officer of the confederate navy in command; and Sir Baldwin Walker finds that the first condition is fulfilled, and the third, but not the second. To make it more clear, it is distinctly so stated in the dispatch of Sir Philip Wodehouse, dated August 19th. I ask the attention of those who wish to see how serious a question the government had to consider and determine to the whole of that dispatch, because it shows that with all the courtesy, address, and gallantry which would no doubt distinguish officers in command of ships of the confederate, or, I should hope, any other navy, yet if you give them an inch they will take an ell, and that the effect of any relaxation of your laws and rules of neutrality may be such, that you will soon be entangled in questions of a character which, if you permit them to arise, will embarrass you in a manner which it is the interest, as well as the duty, of this country to avoid. No one can accuse Sir Philip Wodehouse of any prejudice against Captain Semmes, or any partiality against the Alabama. I believe him to be impartial, fair, and just; but what are the doings of the Alabama in the Cape waters recited by Sir Philip Wodehouse himself? He says:

"The Alabama, leaving her prize outside, anchored in the bay at 3.30 p. m., when Captain Semmes wrote to me that he wanted supplies and repairs, as well as permission

to land thirty-three prisoners. After communicating with the United States consul, I authorized the latter, and called upon him to state the nature and extent of his wants, that I might be enabled to judge of the time he ought to remain in the port. The same afternoon he promised to send the next morning a list of the stores needed, and announced his intention of proceeding with all dispatch to Simon's Bay to effect his repairs there. The next morning (August 6) the paymaster called on me with the merchant who was to furnish the supplies, and I granted him leave to stay till noon of the 7th. On the morning of the 8th Captain Forsyth, of the *Valorous*, and the port captain, by my desire, pressed on Captain Semmes the necessity for his leaving the port without any unnecessary delay, when he pleaded the continued heavy sea, and the absence of his cooking apparatus, which had been sent on shore for repairs, and had not been returned by the tradesman at the time appointed, and intimated his own anxiety to get away. Between 6 and 7 a. m. on Sunday, the 9th, he sailed, and on his way to Simon's Bay captured another vessel, but on finding that she was in neutral waters immediately released her."—*Correspondence*, No. 6, (1864,) p. 5.

It was quite right to release her, and it was also necessary. But see the state of things you have got here. Captain Semmes gets an enlargement of time, and when he leaves he captures a vessel in neutral waters. These are circumstances which ought to warn every one of the importance and necessity of observing strictly the rules made for the preservation of neutrality. Further on in the same dispatch Sir Philip Wodehouse says:

"An important question has arisen in connection with the *Alabama*, on which it is very desirable that I should, as soon as practicable, be made acquainted with the views of her Majesty's government. Captain Semmes had mentioned, after his arrival in port, that he had left outside one of his prizes previously taken, the *Tuscaloosa*, which he had equipped and fitted as a tender, and had ordered to meet him in Simon's Bay, as she also stood in need of supplies. When this became known to the naval commander-in-chief, he requested me to furnish him with a legal opinion; and whether this vessel could be held to be a ship of war before she had been formally condemned in a prize court; or whether she must not be held to be still a prize, and as such prohibited from entering our ports. The acting attorney general, founding his opinion on Earl Russell's dispatch to your grace of the 31st of January, 1862, and on *Wheaton's International Law*, stated in substance that it was open to Captain Semmes to convert this vessel into a ship of war, and that she ought to be admitted into our ports on that footing. On the 8th of August the vessel entered Simon's Bay, and the admiral wrote that she had two small rifled guns, with a crew of ten men, and that her cargo of wool was still on board. He was still doubtful of the propriety of admitting her. On the 10th of August, after further consultation with the acting attorney general, I informed Sir Baldwin Walker that if the guns had been put on board by the *Alabama*, or if she had a commission of war, or if she were commanded by an officer of the confederate navy, there must be held to be a sufficient setting forth as a vessel of war to justify her admission into port in that character. The admiral replied in the affirmative on the first and last points, and she was admitted."—(*Ibid.*)

Sir Baldwin Walker replied in the affirmative as to the guns and as to the officer, but not—and let the House and the honorable and learned member for Guilford take notice—not as to the commission. My honorable and learned friend, the member for Truro, (Mr. Montague Smith,) will see that his inference from the use of the word "commission" in the first letter of Sir Baldwin Walker, written before the facts were ascertained, falls to the ground when we know that the facts, when they were ascertained, were found to meet the first and last points laid down by the attorney general, but not the second. One thing is quite clear, that no commission belonging to the *Tuscaloosa* was at that time exhibited. And now I wish the House to do me a favor to turn for a moment to the error into which the acting attorney general, not at all unnaturally, fell—an error in which he has been followed by several speakers in the debate this evening, when he took the "setting forth" the vessel for war as being a criterion for deciding the question which arose under the Queen's neutrality orders. The authorities on that subject, to which he referred, are authorities on the construction of particular words in the English prize acts, and in some similar American statutes. These statutes provided, that if in war in which we were belligerents one of our ships were taken by the enemy, on being retaken at a later time, should be restored to the original owner, except in cases where the vessel, after her capture, had been "set forth" or employed for purposes of war. We had all the dangers and perils of war to encounter in capturing a ship once employed in fighting against us, and it was therefore but fair that the reward of that danger and peril should also fall to the lot of the recaptors, and that the title of the original owner should not in that case be recognized. The title of the original owner is, however, recognized by these statutes in many cases where it would have been entirely forfeited by international law; it is recognized by them, even after a regular sentence of condemnation has been pronounced. The rule thus laid down to govern cases of recapture by a belligerent power has nothing to do with the question whether a neutral power not at war shall, in one way or another, vindicate its

neutrality when that neutrality has been violated. The prize acts have no force in reference to the subject with which you are dealing. This view was taken by Mr. Justice Story, no mean authority, in a similar case which has been decided by him. I refer to the case of the *Nereyda*, a Spanish ship of war, taken by a privateer which had been fitted out in the United States, for the service of the Venezuelan government, contrary to the foreign enlistment act of the United States. The *Nereyda*, after her capture, was herself regularly commissioned and set forth as a privateer, in the service of the Venezuelan government. If retaken by a Spanish vessel (and supposing the Spanish law as to restitution in cases of recapture to be similar to our own) she would have been condemned as prize to the recaptors, and would not have been liable to be restored to her original owners. But, nevertheless, Judge Story adjudged her original character of a prize taken from Spain not to be obliterated by her subsequent employment for warlike purposes, when the question was, what was to be done with her on her being brought within the waters of the United States; and he ordered her to be restored to her original Spanish owners, on the ground that the ship which took her was fitted out in violation of the laws of the United States. That case went much beyond the present. We were bound, in the present case, to guard ourselves against admitting what I believe to be a very dangerous doctrine, namely, that we should allow any concealment of the character of the prize to be the means of enabling the captor to take the vessel beyond the reach of her Majesty's neutrality orders. Such a principle would find no authority in international law. No sovereign would be mindful of his dignity if he allowed his authority to be set at naught by the captor of a ship merely going through certain forms. It is as competent for a sovereign to prohibit or limit the entry even of public ships of war within his territory as to prohibit the entry of prizes. The principles of international law would fully vindicate a sovereign in the exertion of such authority. The methods for effecting this object are within his discretion; though, at the same time he ought not to use harsher means than the exigencies of the case demand. It appears to me, therefore, that this portion of the dispatch is not only well justified, but that this country would have been unmindful of its dignity, and its neutrality orders might have been absolutely set at defiance, if it had arrived at a different conclusion, taking the facts as they were reported. When the *Tuscaloosa* came back the second time there was something resembling an equipment, and something resembling a commission, and therefore questions of a totally different character then arose as compared with those which her first visit gave rise to. The question, however, before the House is not the determination of her character upon the occasion of her second visit. We must take the facts as they stood upon the 4th of November, and as they were reported to the government. And now I come to the second branch of the case, and that is the suggestion of what should be done if the result of the inquiries proved that the vessel was really an uncondemned prize brought into British waters in violation of her Majesty's orders made for the purpose of maintaining her neutrality. The words employed by the Duke of Newcastle are:

"I consider that the mode of proceeding in such circumstances, most consistent with her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the *Tuscaloosa* by the captors, and to retain that vessel under her Majesty's control and jurisdiction until properly reclaimed by her original owners."—(P. 19.)

Now, I have not the least wish to avoid any portion of the responsibility for that passage. It is true, as was stated in another place, that the law officers of the Crown had suggested that which is expressed in the words I have read as matter for serious consideration. Undoubtedly if the dispatch had been submitted to them, it is probable that they might have proposed some qualifications, or some supplement to it, and it would not have been entirely in accordance with their intentions that it should go out in a form so short and little developed as that in which it now appears. Of course the House will understand that I would not have said so much, if it had not been for the statement made in another place, that the dispatch went beyond what was stated by the law officers of the Crown. We are bound to accept the full responsibility for the passage as it stands, because, with the exception that the matter was mentioned by us as worthy of serious consideration, and not with a view to its immediate settlement in those precise terms, the very words are those in which it was suggested for consideration by the law officers. The Duke of Newcastle might naturally suppose that the law officers intended thereby to intimate the opinion which he adopted, and they would not have intimated what they did, had they not thought the principle involved sound. If blame be due anywhere, it is to us, and I am ready to take upon myself a principal share of it. At the same time, although the question is an open one, and there may be differences of opinion as to whether or not, under such circumstances as those of the *Tuscaloosa*, it would be an extreme exercise of her Majesty's powers to retain a prize for the purpose of restoring her to the original owner, I am prepared to maintain with confidence that no principle inconsistent with international law is expressed in any part of this passage. The case assumed is that either of a willful violation or fraudulent evasion of the orders issued by the British Crown for the

maintenance of our neutrality, that violation or evasion taking place within the territory of Great Britain. That is the state of facts which raises the principle involved. The rest is merely a question of discretion and moderation in carrying out the principle. Can it be said that a neutral sovereign has not a right to make orders for the preservation of his own neutrality, or that any foreign power whatever violating these orders, provided it be done willfully or fraudulently, is protected to any extent by international law within the neutral territory, or has any right to complain on the ground of international law of any means which the neutral sovereign may see fit to adopt for the assertion of his territorial rights? By the mere fact of coming into neutral territory in spite of the prohibition, a foreign power places itself in the position of an outlaw against the rights of nations; and it is a mere question of practical discretion, judgment, and moderation, what is the proper way of vindicating the offended dignity of the neutral sovereign. We have had no answer to what was stated by the solicitor general as to the principle upon which neutral governments have hitherto acted when their neutrality had been violated under circumstances at all of a parallel character to those of the present case. Reference has been made to the case of prizes taken within neutral jurisdiction, as if that case depended upon some different principle; but there is some confusion on this point. If there is one proposition more clear than another in international law, it is, that in such a case, the wrong is against the neutral alone. At the engagement of Lagos, in the time of Lord Chatham's ministry, our navy captured a number of ships in Portuguese waters. Lord Chatham said to our minister: "Make any apology you please, say anything you like to satisfy the dignity of the King of Portugal, but give back not one of the ships." Thus we see the principle laid down that between belligerent and belligerent a prize is a good prize, provided the neutral does not interfere to vindicate his own neutrality. It is usual for the neutral who has interfered under such circumstances to restore the prize to the original owner, but the latter has no right to claim it from the neutral as a man can claim his property in a court of law. The object of the proceeding being to vindicate the territorial rights and guard the neutrality of the sovereign, he does not, of course, want to make money out of the transaction, and therefore restores the prize to the original owner. The considerations which suggest the determination to vindicate the neutrality of the sovereign suggest the propriety of the neutral restoring the prize taken from the captors to the original owners. No one disputes that, as between belligerent and belligerent, there are no rights in such a case; the capture is good, provided the neutral does not interfere to vindicate his sovereignty; but where the neutral does interfere to seize the prize, the invariable practice is to restore the property to its original owners. I quite admit that the United States consul was all at sea about the matter. He seems to have thought that until there was a condemnation in a prize court, or something else done, the original owner in a neutral territory would, as a mere matter of course, be entitled to the restoration of his property. There is no foundation for that idea. If her Majesty's government had not been pleased to issue orders that prizes should not be brought into British ports, it would have been competent to bring them in, and no demand for the restoration of any prize by the original owner could have been listened to. I must now remind the House of a still more recent doctrine as to the restoration of prizes, the origin of which may be said to be due in a great measure to ourselves, and which has been laid down and recognized in the United States. I refer to the case where, although the prize itself has been captured at sea far from the jurisdiction of the neutral sovereign, yet it has been taken by a ship which has violated, by equipment or fitting out, the territorial rights of the neutral power into whose ports it is afterwards brought, and is consequently supposed to come in with the taint of a violation of neutrality attaching to it. Under these circumstances it had been held that the neutral sovereign has a right to retain the prize, with a view to restore it to the original owner. In 1793, when certain privateers were fitted out by the French in the ports of the United States, if not with the connivance of, at least without being prevented by, the government of the States, Mr. Hammond, the English minister, urged them not only to repress those privateers for the future, but to restore every prize which they had brought into the ports of the United States. What was the course taken by the United States government on that occasion? They took a course which has been the foundation of the doctrine acted upon by them ever since. They determined at once to accede to that part of the demand which was directed against the future preparing of privateers in their ports, and communicated that decision on the 5th of June to M. Genet, the French minister. At the same time they refused peremptorily to restore the prizes already brought in by those privateers, because they had been fitted out, they said, with the knowledge and permission of the government. The French, however, continued to fit out more privateers, and the American government, after again considering the matter, on the 25th of June, 1793, determined that all prizes brought in by privateers fitted out after a certain date should be detained in the custody of the consuls of the ports "until the government of the United States should be able to inquire into and decide on the facts." Subsequently the President, on the 12th of July, announced his resolution to refer the

questions concerning prizes "to persons learned in the laws," and requested that certain vessels enumerated in the letter should not depart "until his ultimate determination should be made known." Again, on the 7th of August, the President, through his secretary, informed M. Genet that he had determined to restore all such prizes brought into American ports by privateers fitted out in their ports. When the treaty was made in 1794-'5, there was an article by which the United States bound themselves to make compensation to this country for all prizes which might be brought into their ports by privateers fitted out in their territory after the 5th of June, and the restitution of which had not been effected. That is the origin of the doctrine, and it shows that all these cases proceed upon the principle that where there has been a violation of neutrality, the neutral government has, within his own territory, the right to determine how that violation shall be redressed as regards all prizes brought within its jurisdiction. The principle upon which the American government acted in establishing this doctrine, the principle upon which all governments act with respect to the restitution of prizes taken within their territorial limits, is applicable here, subject only to the question whether in the particular circumstances it is necessary to resort to that mode of vindicating the honor and dignity of the sovereign. I can refer to an older precedent, even more directly in point than those that have been given. In 1658 the States General of Holland had occasion to issue ordinances for the purpose of preventing the entrance into their ports of ships of war bringing prizes. It had been usual to allow the free access of such ships with their prizes; but these ordinances were issued, and in some parts they go far beyond anything which is suggested by the Duke of Newcastle in his dispatch. The first ordinance, issued on the 9th of August, 1658, prohibited the captors of prizes brought into the ports of Holland, even under stress of weather, from disposing of anything on board, and they were put under strict watch and ward. In the ordinance of November 7, 1658, there was a further prohibition against bringing the vessel into the harbor; it could only be brought into the Zee-gaten, where it was safe from danger; and if any one acted otherwise, the prize, as if it had not been captured, was to be restored to him from whom it had been taken, the captor was to be detained, and after due inquiry, his ship was to be forfeited and sold. These ordinances were, indeed, disapproved by Bynkershoek who advocated the practice of allowing all belligerents to bring in their prizes; and they certainly went a great deal further than her Majesty's government could ever be advised to go. It is quite plain, however, that the States General had no doubt about their right to enforce these prohibitions, by the threatened restitution of prizes, and even by stronger measures. Then, I say that the principle cannot possibly be shown to be against international law. Whether or no persons may come to the conclusion that, under certain circumstances, a less strong course would be sufficient, is another question. But the question before the House now is, whether the principle laid down in the dispatch is against international law, and I say that it is justified by every precedent which can be cited on the subject. It does not follow from this proposition either that all uncondemned prizes are to be restored, or that the original owner has a right to claim their restitution. The neutral sovereign restores them, when they are restored, in vindication of his own dignity and authority, and the violation of neutrality is the indispensable condition of calling this principle into play at all. It is on this principle that the dispatch was written, and there is nothing in it contrary to the principle of international law. Reference is made to the absence of a sentence of condemnation, not under the notion that every uncondemned prize should be restored where there is no violation of neutrality, but because the fact of a condemnation in a prize court may be a reason for not treating the vessel as still having the character of a prize. In the case before Mr. Justice Story it was attempted to be proved that a condemnation had taken place, and he seems, undoubtedly, to have entertained the opinion that if it had been shown that the ship had been regularly condemned, there would have been an end of the question. I think I have now said all that is necessary to meet the motion of the honorable gentleman and to prove that no principle is here laid down at variance with international law, and that within her own territory her Majesty is absolutely sovereign and supreme—that she has a right to prohibit the entrance of any foreign ships which she pleases, prizes or no prizes, and that, if her prohibition be disregarded, she is the competent and the only judge of the measures which ought to be taken for the vindication of her authority. That is the principle of the dispatch, and it cannot be shown that such an offender against international law as a belligerent who disregards such orders is entitled to complain of the measures taken to vindicate the rights of the territorial sovereign. Whether milder measures would have been sufficient in any particular case is fair matter for consideration and controversy. The government is not bound by what has passed, and is as much at liberty now as before the dispatch was written to consider the question, and either to recede from or adhere to the course indicated, as they may think proper. Although I have no doubt that Sir Philip Wodehouse acted in the most loyal manner, with the most sincere and upright intention to follow his instructions, I think with the honorable and learned member for Tiverton

(Mr. Denman) that, if he had construed his instructions differently he would have been well borne out. For what do his instructions say?

"If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of her Majesty's orders made for the purpose of maintaining her neutrality, I consider that the mode of proceeding in such circumstances, most consistent with her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under her Majesty's control and jurisdiction until properly reclaimed by her original owners." (P. 19.)

But when the ship had been recognized by the authorities of the colony as a public ship of war on a former occasion, of course her commander had a right to assume that on a subsequent occasion, even if her claim to that title were no better than before, she would be received in the same character. As soon as the news that the Tuscaloosa had been detained arrived here, her Majesty's government felt not only deep regret, but a stronger feeling, and had no doubt that she ought to be released. She was released, and for doing this, on the ground that good faith and honor required us to do so, we have been taunted. Why, when good faith and honor are in question, will any one say that you ought not to put those grounds first and foremost? If this ship had come into the port with fewer men and with fewer guns on board, and with the character of a vessel of war less strongly impressed upon her, still these grounds of honor and good faith would have made it absolutely necessary, under the circumstances, not to take advantage of that state of things, but at once to release her. The only becoming course for the government to take, therefore, was to recognize immediately the justice of Lieutenant Low's reclamations, founded upon the fact that the ship had been at first received without question—to treat her as coming in under a virtual safe-conduct, and to say that the instructions sent to the Cape had been misconstrued. I regret that this should have occurred, but no other course could properly have been taken by the government. Well, then, is the House to affirm the resolution of the honorable member, that the principles laid down in the dispatch are contrary to international law? I say that if the House affirms any such thing it will be affirming that which will be derogatory to the supremacy and the sovereignty of the Queen; it will be affirming that there are powers in time of war which have a right to set at naught, either by device and fraud, or otherwise, the orders of the territorial sovereign, not only upon the high seas, but within the territory of that sovereign; it will be affirming that belligerents may violate that territory, and at the same time claim the benefit of international law against any measures taken in vindication of the authority of the territorial sovereign. I hope the House by its vote will protest against any such doctrine. The question is not whether this was the wisest, the most moderate, the most proper course, a point on which opinions may differ, though some credit should be given to the sincere desire of the minister who wrote this dispatch, to be strictly impartial and fair in carrying out a sound principle. Even if the House thinks that the orders given went upon too extreme an application of the principle, still it must appreciate the purpose and intention of the minister—namely, to enforce the authority of his sovereign within her own territories and to maintain that neutrality to which this country stood pledged toward both parties in the present unhappy war.

SIR HUGH CAIRNS. Sir, I am glad the attorney general has told us that our business was not to affirm the wisdom of the conduct of the government in these transactions. I believe if that had been the proposition before the House, not even the attorney general, who has been as bold as most men to-night—not even the solicitor general, who was not quite so bold as the attorney general—not a single member would have ventured to say that the transactions which are detailed in these papers have been characterized by the attribute of wisdom. But before we go to a division, I want the House to understand what is the question on which we are going to divide, for I think the attorney general has mistaken the question. I venture to think that the discussion has ranged over two questions which are of a very different nature. The first is: What was done to the Tuscaloosa, and was she a ship of war or not? The other, the one raised by the motion of my honorable friend, the member for Maldon, (Mr. Peacocke,) is: What are the instructions given to our agents as to what is to be done in future? Now, on the Tuscaloosa and her character I shall say a very few words. It has been stated by the attorney general, and by the solicitor general, also, that the circumstances connected with this vessel when she first came to the Cape were of a very suspicious character. Now, I will make an admission to the government. I think those circumstances were very suspicious. I think that was eminently a case in which the colonial government was bound to consider what was really the character of the Tuscaloosa, and whether she was in reality a prize when she was passed off as a vessel of war. But I think no better opinion could have been had on that point than the opinion of the American consul. He of all men was interested in making the best case he could against the vessel, and I will take his statement concerning her when she came into the harbor and before the attorney general was consulted. I find, on the

10th of August, the United States consul writing to Governor Wodehouse in these terms:

"An armed vessel named the Tuscaloosa, claiming to act under the authority of the so-called Confederate States, entered Simon's Bay on Saturday, the 8th instant. That vessel was formerly owned by citizens of the United States, and while engaged in lawful commerce was captured as a prize by the Alabama. She was subsequently fitted out with arms by the Alabama to prey upon the commerce of the United States."—*Correspondence*, No. 6, (1864,) p. 11.

The United States consul says she came in as a man-of-war, to do the business of a man-of-war, and prey on the commerce of the United States. Now, what is the use of splitting hairs on the number of guns she had on board or the number of men, when the only person put in motion at all was the United States consul, and that is his judgment as to the character of the vessel? I must also set the attorney general right with respect to a grave mistake. He says the commission of the ship was moonshine, there was no commission at all, nobody supposed there was any commission. I should like to know whether Sir Baldwin Walker, or any other person on the part of the government, asked for her commission, did any one say, "As you are equipped for warfare, have you a commission from the belligerent government you represent?" That was the natural course to take. We must remember that, of course, the officer in command could not volunteer that information, because there never was a word said to him on the subject; though this controversy was going on between Sir Baldwin Walker and Sir Philip Wodehouse, and the only person not acquainted with the subject of the controversy was the person who could have given the necessary information. But what took place when she came back? Why then it occurred to the authorities to ask whether she had a commission or not; and a number of very proper questions were framed by Sir Baldwin Walker to be put to the commander, and among them was this: "What papers are on board to constitute her as the confederate bark Tuscaloosa?" To which the commander's reply was: "The commission of the lieutenant commanding the Tuscaloosa, from Captain Semmes. The officers also have commissions to their ship from him." It thus appears that as to her papers the vessel was regular, and that the necessary ingredient which the attorney general said was wanting was not wanting at all, and the moment it was asked for it was produced. When they did not know whether she had a commission they let her alone, but the moment she produced her commission they seized her. I shall now state the objection I have to what the Duke of Newcastle did when information was sought from the home government by our agents at the Cape. When I say the Duke of Newcastle, I do not mean to throw the responsibility on him, because the reports and dispatches sent out by him were the embodiment of the deliberate opinion of the government. The government knew that the difficulty experienced by our colonial agents arose from the fact that the Tuscaloosa had been a prize, but had come into the harbor under the appearance of being a man-of-war, and that what they wanted to know was whether her character as a man-of-war merged the character she had as a prize. That was a very plain question. What was the reply given to it by the Duke of Newcastle, writing for the government?

"Whether in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent government, without being first brought *infra præsidia* or condemned by a court of prize, the character of prize, within the meaning of her Majesty's orders, would or would not be merged in that of a national ship of war, I am not called upon to explain. It is enough to say that the citation from Mr. Wheaton's book by your attorney general does not appear to me to have any direct bearing upon the question."—*Correspondence*, No. 6, (1864,) p. 18.

The colonial ministers, having pressed her Majesty's government to give them their views on that and other very important questions, the dispatch in reply commences: "I will now proceed to convey to you the views of her Majesty's government on these questions," and then proceeds, in the passage which I have just quoted, to state that on the first of these questions the government did not consider themselves bound to give any information at all. Well, on the second visit of the Tuscaloosa she was seized by the authorities in the Cape, and when the home government heard of her seizure they gave orders for her release. I agree with the attorney general in thinking that that was the best thing that could be done under the circumstances. But observe the ungracious way in which that was done. In a letter of the 10th of March the Duke of Newcastle says:

"Her Majesty's government have, therefore, come to the opinion, founded on the special circumstances of this particular case, that the Tuscaloosa ought to be released, with a warning, however, to the captain of the Alabama, that the ships of war of the belligerents are not to be allowed to bring prizes into British ports, and that it rests with her Majesty's government to decide to what vessels that character belongs."—*Correspondence*, No. 6, (1864,) p. 31.

Her Majesty's government had decided that the Tuscaloosa was a ship of war. Her Majesty's government had not blamed or reprimanded Sir Baldwin Walker for the view he had taken, and the attorney general has told us that as she had been allowed

to depart after her first visit, it would have been a gross violation of faith to keep her when she came the second time. Accordingly, she was ordered to be released; but as she had been detained for some time, the duty of the government was to have made an apology; to have said: "We are sorry for what has occurred; it occurred under a misapprehension; you shall have your ship back, and for any loss you may have sustained you shall be indemnified." The government say that they wish to maintain strict neutrality; but I want to know whether they do so. Will any member of the government stand up and say that if a ship of ours had been seized by another power, as they seized the *Tuscaloosa*, would they have been content with a dispatch stating that it was a mistake, and with the restoration of the ship without apology? You act so with a people with whom you think you can deal in that way with safety; but would you have acted so with the United States? Was that the course you took with the United States when you found that they had been guilty of a gross violation of our neutrality with respect to enlistment on the coast of Ireland? This may be the vaunted neutrality of the government, but it in no wise deserves the name, because it consists in doing all the mischief you can to one belligerent so long as you think it is safe to do it, and, when you find you can no longer do it with safety, in ungraciously, churlishly, and without apology, restoring the property you are afraid any longer to keep. I now pass from the matter connected with the *Tuscaloosa*, and come to the more important point to which the motion of the honorable member for Maldon refers, namely, that the instructions contained in the Duke of Newcastle's dispatch of the 4th of November, 1863, which still remains unrevoked, are at variance with the principles of international law. This has nothing to do with the case of the *Tuscaloosa*, for that is past and gone; and the question is whether those instructions, issued for the future, may not land you any morning in a war not only with one of the belligerent powers, but with the neutral powers of Europe. I thought, from what had passed a few evenings ago in another place, that we might have been relieved from discussing this question. I did not understand the foreign secretary to have justified for one moment, in point of international law, the correctness of the Duke of Newcastle's instructions with respect to the future. On the contrary, I understand him to have said that he agreed in thinking that the dispatch went somewhat too far, considering the noble lord's capacity for putting everything into a dispatch which ought not to be there; that was saying a good deal; and he said that the question whether prizes should be seized and detained was one deserving serious consideration. If the dispatch had contained those words it would have been the climax of the dispatch, for in the first part it would refuse to give the information asked for in one point; and on the other point it would have stated that the question was one deserving serious consideration. However, to-night we have had a view presented to the House which makes it incumbent for the House to deal with the question. If the law officers of the Crown had followed the course taken by the foreign secretary, "We do not justify the instructions in that dispatch, and are proceeding to take measures to revoke them," we might have been relieved from the present discussion; but to-night, in the boldest and strongest language, the attorney general and the solicitor general have been heard to affirm every word of the instructions, and to contend that they are consistent with international law. What is the order of her Majesty which is said to have been violated? It is this, (it will be found in one of the papers before the House:) Lord Russell, writing to the lords of the admiralty, says that her Majesty is desirous of preserving strict neutrality, and with a view to carry that intention into effect, it is proposed to interdict the armed ships and privateers of both parties from bringing prizes into the ports, harbors, and roadsteads of the United Kingdom and colonies; therefore, the government desire to issue instructions to naval and other authorities accordingly. That is the only intimation given, and if the matter rests there, I contend with perfect confidence that it would have been a gross violation of good faith and international law for the government to give instructions to their officers without notice to the officers of either of the belligerents, that if a prize came into a harbor belonging to the Queen they were to seize it, divest it from the persons who brought it in, and restore it to the original owner. There is no good faith in that; but the matter does not rest there. I will ask the House to get rid of the question altogether as relating to the confederates, because some gentlemen have strong views with regard to them; but suppose a vessel belonging to the United States captured a prize at sea, and found it convenient to bring it into one of our colonial harbors, I want to know what course would be taken. I can understand that our officials in the colonies might desire the prize to be taken away, might prevent the prize having communication with the shore, and might use force, if necessary, to make the prize leave the harbor and go out to open sea; but do you suppose that if our naval forces at one of our colonies were to attempt to capture the prize and give it over to the confederates, that the United States would for one moment tolerate such conduct? It would be as clear a *casus belli* as any step that could be taken. The attorney general asks if a belligerent ought not to bear the blame if he violates an order of which he has notice? Take the case of a power not a belligerent. Suppose the northern States of America captured a French ship, thinking

her a proper prize, and carried it into one of our harbors; the governor, acting on your instructions, seizes the prize and hands it over to the French owner. But he will not come to you at all; he will go to the court of the capturing power—the prize court of the United States—and say, “Where is my ship? Restore it to me with costs and damages.” The French owner goes to the American court and says: “Bring in my ship, in order that I may have it restored and get my costs and damages.” “No,” says the captor, “we haven’t got it; the English government took it from us; very likely they are keeping it for you at the Cape of Good Hope.” To the Cape of Good Hope then goes the French owner and makes his demand. “Oh yes!” says the colonial governor, “we’ve got it all right; here it is—you are quite welcome to it.” “Well, but,” says the French owner, “what about my costs and damages? My ship has been rotting; she has lost a voyage; and the damages I want are a great deal more than the value of the ship.” I want to know whether the government are going to undertake to pay costs and damages in such cases. This is not the case of a belligerent; it is the case of the French government; and will you tell the French government that you will not pay costs and damages; that they may be thankful to get back the ship, although you have deprived them of the advantage which international law gave them, of going to the court of the captor and getting costs and damages there? Does the attorney general mean to say that is international law; that there is any precedent for such doctrine? If we are to have any more argument to-night, I shall be glad to hear whether the government can controvert that clear proposition. I should like to know how the government are prepared to deal with cases of this kind. I venture to say that it is as clear as any proposition of international law that in such a case you are injuring not the belligerent but a co-neutral power. What is the sole fragment of authority for the doctrine which the attorney and solicitor generals have propounded in the House of Commons to-night? I was very much surprised to hear this authority first put forward by the solicitor general in a very solemn manner, and repeated afterward by the attorney general. Says the solicitor general, it is not a new doctrine, it is quite old and common; it depends upon the simplest and clearest principles, because it is a plain doctrine of international law, that if a prize is taken in neutral waters, the neutral steps in, takes the prize, and restores it to the owner. Moreover, he said, the same thing happens when a prize is taken on the high seas by a ship fitted out in the neutral jurisdiction; whenever the prize comes within the jurisdiction of the neutral, the neutral may seize and hold it for the owner. And, say the attorney and solicitor generals, the ground of this is that your neutrality has been violated; and whenever your neutrality has been violated you may go at once and seize any prize which comes into your possession. I was very much amused at an observation of the attorney general in reference to his fellow attorney at the Cape, which he might, perhaps, have rather more justly applied to the solicitor general. My honorable and learned friend said that the colonial attorney general, when he quoted Wheaton, which was a text-book, did not perceive the special and limited application of what he was quoting. I venture to recommend that observation to the solicitor general. It is a dangerous thing to quote elementary writers unless you cite the whole of what they say on a particular subject. If the solicitor general had looked a little closer at this part of Wheaton he would have seen there a most material statement, which would have relieved him from much of the obscurity into which he has fallen. Wheaton says:

“The jurisdiction of the national courts of the captors, to determine the validity of captures made under the authority of their government, is exclusive of the judicial authority of every other country, with two exceptions only;”

Which two exceptions are the cases mentioned by the solicitor general, and which, being two exceptions only, negative the idea of there being any other exceptions. The first is where a capture has been made within the territorial limits of the neutral, and the second, where it has been made by an armed vessel fitted out within the neutral jurisdiction. Wheaton then goes on to say that Louis XIV did make an *ordonnance* in 1681, by which he attempted to extend the rule; but it was always considered unsound international law, and had never been acted on. This is not a mere question of words. No power has got the right to take a prize by the strong hand and restore it by the strong hand. What your right is, is to set up an admiralty jurisdiction to determine the question of rightful capture. These questions are not to be determined by a colonial secretary, but by a court duly founded for the purpose; and no international law has said that you may have a prize court unless in those two excepted cases; and if you go beyond those cases, you go beyond the limits and violate international law. The attorney general was driven by despair to rely on an ordinance of Holland 200 years old, which, so far as we know, has never been acted on, and which, if it were acted on, would prove immensely too much—in fact, so much that I do not suppose the attorney general would rely on it for a moment. It was a municipal ordinance passed to this effect—that if a ship of war and a prize came into a certain part of their canals, not only the prize should be seized, but the ship of war also, and everybody on board put in prison. Is that the view of international law taken by the government? These are the only authorities

which the government can produce. Mr. Wheaton, into whom the solicitor general has only cursorily looked, when he is properly understood, limits interference expressly to two exceptional cases; and as for the Dutch ordinance, I make the attorney general a present of that with all my heart. If the government had told us here, as was declared in another place, that they were not prepared to contend for such propositions of international law, then we should have no more to say; but here they contend that these propositions are right, and I say it is the duty of this House to take the matter up. The government, we are told, are considering the matter, but they are considering it with the idea that they have got a right to seize these prizes. It is an affair which demands the attention of the House of Commons, for some morning we may wake up and find a conflict arisen in some one of our colonies, in which we shall have the mortification of having to admit that we are altogether in the wrong. I appeal, therefore, to the House of Commons to affirm the proposition contained in the motion of my honorable friend, that the instructions given by the Duke of Newcastle to Governor Wodehouse, which remain still unrevoked, are at variance with the principles of international law.

Question put.

The House divided :

Ayes.....	219
Noes.....	185
Majority	34

Main question put and agreed to.

APPENDIX No. XXI.

DEBATE IN THE HOUSE OF COMMONS OF MAY 13, 1864, RELATIVE TO THE CONFEDERATE SHIP GEORGIA.*

[From Hansard's Parliamentary Debates, vol. 175, pp. 467-514.]

HOUSE OF COMMONS, *May 13, 1864.*

UNITED STATES—THE CONFEDERATE SHIP GEORGIA—OBSERVATIONS.

MR. T. BARING. I rise to call attention to the circumstances under which the Georgia has been allowed to enter the port of Liverpool, and to put a question on the subject. As I bring this matter before the House simply as one of English interest, I shall not refer to the feelings or prospects of either of the contending parties, nor shall I endeavor to provoke an expression of sympathy with either side. I wish to make no charge against any one, and if I refer at all to the past, it will be merely for the purpose of illustrating the position in which the country is placed as to its international engagements. The question is of very considerable importance, and deserves, I am persuaded, the serious consideration of the House. An incident has recently occurred which is of a most extraordinary character. A vessel of war carrying, as they were told, the flag and commission of the confederate government, has recently entered the port of Liverpool. She is still there, and when the House hears the history of her career, it will be somewhat surprised at the course which has been pursued. This is her history: The Japan, otherwise the Virginia, commonly known as the Georgia, was built at Dumbarton, on the Clyde. She was equipped by a Liverpool firm. Her crew were shipped by the same Liverpool firm for Shanghai, and sent around to Greenock by steamer. She was entered on the 31st of March, 1863, as for Point de Galle and Hong Kong, with a crew of forty-eight men. She cleared on the 1st of April. She left her anchorage on the morning of the 2d of April, ostensibly to try her engines, but did not return. She had no armament on leaving Greenock, but a few days after her departure a small steamer called the Allar, freighted with guns, shot, shell, &c., and having on board a partner of the Liverpool firm who had equipped her and shipped her crew, left Newhaven and met the Georgia off the coast of France, near Ushant. The cargo of the Allar was successfully transferred to the Georgia on the 8th or 9th of April; her crew consisted of British subjects. The Allar put into Plymouth on the 11th of April, bringing the Liverpool merchant who had directed the proceedings throughout, and bringing also fifteen seamen who had refused to proceed in the Georgia on learning her real character. The rest of the crew remained. At the time of her departure the Georgia was registered as the property of a Liverpool merchant, a partner of the firm which shipped the crew. She remained the property of this person until the 23d of June, when the register was canceled, he notifying the collector of her sale to foreign owners. During this period, namely, from the 1st of April to the 23d of June, the Georgia being still registered in the name of a Liverpool merchant, and thus his property, was carrying on war against the United States, with whom we were in alliance. It was while still a British vessel that she captured and burnt the Dictator, and captured and released under bond the Griswold, the same vessel which had brought corn to the Lancashire sufferers. The crew of the Georgia was paid through the same Liverpool firm. A copy of an advance note used is to be found in the diplomatic correspondence. The same firm continued to act in this capacity throughout the cruise of the Georgia. After cruising in the Atlantic and burning and bonding a number of vessels, the Georgia made for Cherbourg, where she arrived on the 28th of October. There was at the time much discontent among the crew. Many deserted, leave of absence was given to others, and their wages were paid all along by the same Liverpool firm. In order to get the Georgia to sea again the Liverpool firm enlisted in Liverpool some twenty seamen, and sent them to Brest. The Georgia left Cherbourg on a second cruise, but having no success she returned to that port, and thence to Liverpool, where her crew have been paid off without any concealment, and the vessel is now laid up. Here, then, is the case of a vessel clandestinely built, fraudulently leaving the port of her con-

* Transmitted with dispatch No. 694, from Mr. Adams to Mr. Seward, May 19, 1864; see vol. II, p. 704.

struction, taking Englishmen on board as her crew, and waging war against the United States, an ally of ours, without having once entered a port of the power the commission of which she bears, but being for some time the property of an English subject. She has now returned to Liverpool, and has returned, I am told, with a British crew on board, who, having enlisted in war against an ally of ours, have committed a misdemeanor in the sight of the law. We hear nothing of the steps which, under those circumstances, were taken by the government; but I feel assured they have done all that lay in their power, and was consistent with their duty under the existing law, to prevent the repetition of such an outrage. It is, therefore, not their conduct in the matter, but the impotency and insufficiency of the foreign enlistment act, which our courts of justice find it impossible to interpret, that I wish to bring under the notice of the House. Many of these vessels are afloat committing injury on our ally. The vessels to which I allude are vessels which would undoubtedly have been arrested if time had been given and if their purpose had been known. The question is, in fact, can we be said to be carrying out our obligations as a neutral power toward a belligerent which is an ally, in a manner consistent with international law, though it may be in harmony with our municipal law, while such a state of things is permitted to exist? For my own part, I have no wish to lose myself in the mazes of a legal discussion on the subject, but common sense as well as international law, I believe, prescribe that a neutral should act toward a belligerent who is an ally as she would like under corresponding circumstances to be done by. It was in order to prevent a war between neutrals and belligerents that the foreign enlistment act was passed; and if vessels are allowed to proceed on a course of devastation, if they were admitted into the ports of our dependencies and colonies, and not only that, but to put into ports in this country, is it not, I will ask, time to consider whether we should not do our duty toward others, and whether the existing law affords us the means of protecting the interests of our ally as well as our own? The question as to the extent to which those vessels ought to be admitted to the ports of our colonies and dependencies is, I contend, one of serious importance; but it is, at the same time, one as to which I think there can be no doubt what course the government should adopt. When a vessel fraudulently leaves our ports, which we know would have been arrested here had her objects been ascertained and her construction certified, and proceeds to carry into effect proceedings of hostility against an ally to the endangering of the peace of this country, it seems to me that it is the duty of the government to avail themselves, in her case, of the powers which they possess, and by proclamation to shut our ports against her. If the House will permit me, I will read on the subject a passage from a writer on international law who signs himself "Historicus," and who says, speaking of the Alabama:

"First of all, the English government must decide, on the best information at their disposal, whether she was or was not unlawfully equipped in this country in breach of our neutrality. Their decision on this point ought to be final, for they are the sole judges of it, and the federal authorities may impugn their judgment, but cannot question their determination. If the English government determine that the Alabama was not unlawfully equipped within the realm, she will, of course, enjoy the privileges and immunities of any other lawful belligerent cruiser. If, on the other hand, she is decided to have been unlawfully equipped, then she ought to be forbidden access to any port within the jurisdiction of Great Britain. If she comes within our ports with a prize, her prize should be taken from her and restored to her original owner, and she herself compelled to depart."

There is another extract from the same writer to which I wish also to invite the attention of honorable members. It is as follows:

"Now, it is a sound and salutary rule of international practice, established by the Americans themselves, in 1794, that vessels which have been equipped in violation of the laws of a neutral state shall be excluded from that hospitality which is extended to other belligerent cruisers, on whose origin there is no such taint. Accordingly, the cabinet of Washington compelled all the French privateers which had been illegally fitted out in America, against England, to leave the ports of the United States, and orders were issued to the custom-house officers to prevent their return. This course of proceeding appears equally consonant to the principles of law and the dictates of policy. The question then remains, Was the Alabama unlawfully equipped and manned within the jurisdiction of Great Britain? Now, setting aside the vexed question of equipment, I think there can be very little doubt on that of enlistment. The question is one which, from its very nature, is not, and cannot become, the subject of judicial determination, because a neutral government cannot exercise a jurisdiction over such a vessel. It is a matter on which the executive of the neutral government must, according to the best information it can obtain, form its own judgment, and that judgment is final and conclusive on all parties. Now, I observe that, in a dispatch dated March 27, 1863, (parliamentary paper, p. 2,) Lord Russell writes: 'The British government has done everything in its power to execute the law; but I admitted that the cases of the Alabama and the Orefo were a scandal, and, in some degree, a reproach to our law.' Now, with the greatest deference to those persons who may be of an opposite opinion, I submit

that vessels of which such a statement can be properly made—and that it was properly made no one acquainted with the circumstances of their outfit and manning can honestly doubt—are not entitled to the hospitality of the country whose laws they have eluded and abused. I think that to deny to the Florida and Alabama access to our ports would be the legitimate and dignified manner of expressing our disapproval of the fraud which has been practiced upon our neutrality. If we abstain from taking such a course, I fear we may justly lie under the imputation of having done less to vindicate our good faith than the American government consented at our instance on former occasions to do."

Again, Earl Russell, in a dispatch written in the month of June, said that the British government had done everything in their power to execute the law, but he confessed that the case of the Alabama was a scandal to our laws. Now, such vessels as the Georgia are vessels which avowedly ought to have been stopped if their purpose had been known. They are vessels whose destination is to roam about, never getting home, and which are tainted with the offense of having violated our neutrality. They are vessels, therefore, which, on every ground, have no claim to the hospitality of the country, and I am bound to say that both our international obligations and a due regard for our own interests ought to have led us to exclude them from our ports. The Georgia has arrived in Liverpool and there discharged her crew, and what guarantee have we that other vessels may not do the same; that our neutrality may not be violated, and that we may not hereafter have to deal with a state of things in which our position will be reversed? While, therefore, I am anxious to express my belief that, under the law, as it stands, we cannot carry our international obligations fully into effect, I am likewise desirous of inviting the attention of the House to the situation in which this country will be, if the precedents now established are acted upon, in the event of our being involved in war, while other states are neutral. Under the present construction of our municipal law there is no necessity that a belligerent should have a port, or even a seashore. Provided she has money, or that money is supplied to her by a neutral, she may fit out vessels, and those vessels need not go to the country to which they are said to belong, but may go about the seas dealing destruction to British shipping and property. Take the case, which I hope we shall avoid, of our being at war with Germany. There would, as things now stand, be nothing to prevent the Diet of Frankfort from having a fleet. A number of the small states of Germany might unite together and become a great naval power. Money is all that is required for the purpose; and Saxony, without a seashore, might have a first lord of the admiralty, without any docks, who might have a large fleet at his disposal. The only answer we could make under those circumstances to France and the United States, who, as neutrals, might fit out vessels against us on the pretense that they were German cruisers, was that we would go to war with them; so that, by the course of policy which we are pursuing, we render ourselves liable to the alternative of having our property completely destroyed, or entering into a contest with every neutral power in the world. We ought, under these circumstances, to ask ourselves what we have at stake. I will not trouble the House with statistics on the point, but we all know that our commerce is to be found extending itself to every sea, that our vessels float in the waters of every clime, that even with our cruisers afloat it would not be easy to pick up an Alabama, and that the destruction of our property might go on despite all our power and resources. What would be the result? That we must submit to the destruction of our property, or that our shipping interests must withdraw their ships from the ocean. That is a danger the apprehension of which is not confined to myself, but is shared by many who are far better able to form a judgment than I am. Recollect that your shipping is nearly twice as large as that of the United States. If you follow the principle you are now adopting as regards the United States, you must be prepared to stand the consequences; so strongly was this felt by ship-owners that memorials have already been addressed to the government upon the subject. Last year such a memorial was sent to Earl Russell by the ship-owners of Hull, and, if I am not misinformed, a similar one has been sent by the ship-owners of Belfast to his honorable and learned friend, the member for that borough, who has forwarded it to the noble earl. The memorialists stated that they viewed with the greatest apprehension the permission which has now been given for the violation of our neutrality and the clandestine furnishing of ships to a belligerent; and last night the honorable member for Liverpool presented a petition, signed by almost all the great ship-owners of that place, enforcing the same view and expressing the same anxiety. I am a little surprised at this manifestation, because what is happening around us is a source of great profit to our ship-owners; but it is a proof that they are sensible that the future danger will far preponderate over the present benefit and advantages. Merchants and ship-owners are generally a quiescent body, attending to their own affairs and leaving the concerns of the country to those in whose abilities, position, and experience they have confidence, and on whom they can rely, on whatever side of the House they may sit, patriotically to unite to avert the evils against which private individuals cannot secure themselves. I think it a matter of regret that no proposal is made by the government for the modification of the existing law; and I can-

not imagine that, if such an attempt were made, honorable members on my own side of the House, who may, at times, be placed in power, would refuse to assist in taking steps to insure this country against the dangers which menace its commerce. We ought, I think, no longer to dally with this question. It is one of immense importance and of a most dangerous character. Neither the government nor any one else in this House, I am sure, can be deterred from proposing or adopting a necessary measure by the fear that they may be taunted with acting at the dictation of the United States. No one can be more indisposed than I should be to sacrifice the rights, the interests, or the honor of the country to the dictation of a foreign power, but no one can be more convinced that we ought to blush for ourselves and our country if we are deterred by the fear of some newspaper taunt, some electioneering speech, or some piece of stump oratory, from yielding to the dictation of reason and good sense, and applying a remedy where an evil has been proved to exist. I have heard it said that this is not the time to take such a step; that we ought to wait until the war is over, when we could pass an act without apprehension that its purport or intention might be mistaken. Has any foreign enlistment act ever passed in time of peace? Our own act was passed in 1819, while Spain was at war with her colonies. And let the House remember the act of General Washington, perhaps the boldest act in the life of that illustrious man, when he issued his proclamation to prevent the citizens of the United States from taking part in a war against Great Britain. The whole feeling of that country was on the side of France. "France and freedom" was, as a cry, opposed to "Great Britain and tyranny." All the recollections of the past war with Great Britain were fresh in the memory of the Americans, and their gratitude to France was still alive. Popular feeling was strongly against General Washington, and yet he perilled his power, his influence, and his popularity, and had the courage to propose and carry a measure for which he was afterward praised and blessed by his countrymen, because they recognized it as being in accordance with wisdom, with their own interests, and with justice. What is the moral? The moral which I draw from that is, that whatever may be our individual sympathies, or our wishes and views as to the causes or results of the pending contest, we need not be afraid of being charged with acting under the dictation of a country which is now engaged in the most exhausting conflict that has ever occurred. We ought not to yield to sympathy when the dictate of duty is clear that we should act to others as we would that they should act to us; we ought not to be prevented from adopting such a measure as may avert the calamity to which I have adverted so imperfectly, but which now looms in the view of every ship-owner; we ought not to be deterred from passing such an act as will protect this country against the charge of being neutral only when it suits her purposes, and violating it when it suits her interests. I cannot help thinking that, if there is to be a change of the law, this is the moment when those who guide and control our destinies are bound to consider what course shall be pursued. We could do it now without giving rise to any idea that we had been threatened. If we do it now we may save ourselves, while, if it is delayed, we cannot avoid retribution hereafter. If we miss this opportunity, what we may do at a time of general peace will not be accepted when war occurs. We shall be referred back not to what we have done after the war was over, but to the acts which we have sanctioned by our present policy. I am anxious to ask the government whether they do not see that what has occurred at Liverpool may lead to our neutrality being called in question, that it perils the performance of our national obligations, and may seriously affect our interests and welfare in the future.

The ATTORNEY GENERAL. Sir, with many things which have been said by my honorable friend in the course of his able and temperate speech I entirely agree. No one who has observed the conduct which the government have endeavored to pursue with regard to this important and intricate political subject during the past two years can doubt that, whether successfully or otherwise, they have endeavored to the best of their power to vindicate the laws of this country, and at the same time to fulfill the obligations of a sincere and impartial neutrality. I know that these professions will not meet with the assent of those who, in their own minds, have no sympathy with the neutrality itself, who have given themselves, doubtless under the impulse of generous motives, to entire, unqualified, and enthusiastic sympathy with one or the other of the belligerents. Nevertheless, I have such confidence in the justice and right feeling of the country as to believe that the people of England generally will perceive that the government, in the course which they have pursued in circumstances of no slight difficulty, have really desired to maintain the law and preserve the honor of the country, and at the same time not to deviate from the path of a real and impartial neutrality. Addressing myself first to the last and most generally important of the topics of my honorable friend's speech, I need hardly say that we are quite sensible of the gravity of the public evil which exists when merchants or any other persons in this country hold themselves at liberty, by all kinds of shifts and evasions, to treat with contempt her Majesty's proclamation of neutrality, to make themselves parties in a war in which her Majesty has proposed to be neutral; to shelter themselves under those opportunities of escape which the just regard of the law of our country for persons accused of

any offense invariably offers; and to do acts which in their immediate effects place in peril the friendly relations of this and another great nation, and which in their ultimate consequences may possibly recoil with disastrous and destructive effect upon the trade and commerce of their own country. The government had some right to hope that in the circumstances of such a war as this, English merchants occupying eminent positions, would not spell out the law under the advice of lawyers, saying "I cannot find it in the bond," and availing themselves of every means of escape which ingenuity can suggest, hasten to plunge this country into peril, and create a precedent for future mischiefs and dangers, against which the law of this country seeks to provide. I hope the time will soon come—indeed, I think I may infer from the memorial to which my honorable friend has referred that the time has already come, when the voice of the mercantile community of England will be raised, so that those who may be unwilling to hold themselves bound by her Majesty's proclamation of neutrality shall see that they cannot expect the moral support of the great body of their fellow countrymen. I must endeavor to show that the conduct which has been pursued by her Majesty's government on this subject has been, at least, of that character which the country had a right to expect. The House is aware that there are only three vessels which are alleged, and in those cases I do not say the allegations are well founded, as they have never been brought to the test of judicial proceedings, but there are only three vessels altogether which are alleged to have been fitted out in this country in violation of the law, and with the practical effect of placing this country in the situation of ministering in an important and formidable manner to the warlike requirements of one of the two belligerents. Her Majesty's government believe that the law was intended to strike, and does strike at such acts. With regard to those three ships, the House will recollect that the first which left the shores of this country, the *Oreto*, afterward the *Florida*, left before any information upon which the government could act had been imparted to them. That vessel was afterward arrested at Nassau, was tried there and acquitted, but it was found that there was reasonable cause for the arrest. So far the government was not to blame. As to the next ship, the *Alabama*, I need not repeat what was said upon a former occasion as to the steps which were taken by the government, after full consideration of the evidence laid before them, with a view to arrest that vessel. It is well known to the House and to the country that orders to that effect were given, but the ship in the meantime made her escape. Then, lastly, there was this vessel, the *Georgia*, as to which no information whatever reached her Majesty's government; no evidence upon which we could act until she was actually gone. So successfully disguised were the real designs of those connected with that ship that, as my honorable friend has stated, the crew were actually engaged for a voyage to Shanghai, and all other arrangements for arming her were made with a view to concealment and disguise, and it was only off the coast of France that, meeting another vessel, she received her armament and re-enlisted her crew. The government, therefore, had no opportunity of interfering so as to stop that vessel. If there be those who think that all those proceedings connected with these ships were perfectly lawful, they will, I am sure, join with me in regretting that, if lawful, they were not also open, avowed, and above board. It does not seem altogether probable, that if the persons engaged in these proceedings had believed in their lawfulness, they would have taken all possible pains to disguise their real character. Afterward, as the House is aware, her Majesty's government took action in the case of the *Alexandra*, and since then they have done the same with regard to two other vessels, concerning which I will say nothing, as they will soon be the subject of judicial trial. I may also mention that in Scotland the government directed the seizure of the vessel *Pampero*, under the foreign enlistment act, and the result of that proceeding has been that a verdict has been given by consent for the Crown, and that, while great liberality has been shown in waiving the forfeiture to the Crown, security has been taken against the employment of the vessel for any belligerent service, and the authority of the law has been successfully vindicated. I am happy to be able to say that, whatever may have been the difficulties which in these cases the government have had to encounter in point of law or evidence, the interference of the government does appear to have been productive of good effect, as it has impeded the progress of the system of fitting out naval armaments for a belligerent state. We have no reason to believe that the efforts of the government have been unsuccessful in their practical object, nor even so far as regards the elucidation of the law, although it would, perhaps, be premature to express a confident opinion upon a subject concerning which high authorities have differed. But I cannot avoid expressing a sanguine hope that the result of the measures taken by the government will be to clear up some of the difficulty attaching to the construction of the law, and to lead in future to a better observance of it. I am encouraged in that hope by the fact that in the Court of Exchequer two learned judges adopted the construction of the act upon which the Crown had been advised to proceed. Their construction has since received the indorsement of a learned judge in the Queen's Bench, under circumstances which make it probable that other judges of that court may concur in his opinion, and in the case of the *Pampero*, in Scotland, the judges of the court of session pronounced opinions

tending to a great extent to confirm the construction of the act contended for by the Crown.

The result of all this is to leave the government in a situation in which they have a right to hope that the law, as it is, may, in all such cases, be capable of being vindicated, and that steps taken to vindicate it will not fail in their object, and therefore the House will probably think that it will not be improper, instead of now suggesting a change of the law, for the government to act upon that view; but if it should prove to be otherwise, and that the present law is not sufficient, then I trust they may hereafter look for that support and encouragement from this House and the country which upon a subject so important it is essential to obtain. If, in the absence of such support and encouragement, proposals for a change of the law were ineffectually made, it would commit those who ought to have the common interest of the country at heart to a premature expression of opinion which might have disastrous effects upon the future of this country. We think, therefore, that if it should ever become necessary to consider the subject, it should be considered at a time when no party feelings nor temporary sympathies may exist to induce the House to take a course which it may be difficult afterward to retract, and which, if persevered with, might be attended with serious consequences to the welfare of the country. Under these circumstances, the House will, no doubt, consider that government are doing right in adhering to their original hope that the law as it is may be found sufficient for its purpose, and, at all events, that they ought not to propose any change in the law until they are convinced that there is an absolute necessity for it, and that such proposals will receive the encouragement and support of the House and the country, without which they could not be carried into effect. Having said that, I will address myself to the particular subject of the motion of my honorable friend. I have shown that with regard to the former history of the Georgia the government have omitted nothing which they could do under the circumstances. That ship has now returned as a confederate ship—a public ship of war, with a regular commission as such. I must here notice one observation of my honorable friend. He says, that from the 1st of April, 1863, until the following 23d of June, this ship, the Georgia, was registered in this country in the name of a British owner, a merchant of Liverpool, and that therefore she was cruising, burning, and destroying vessels at a time when she was a British ship. I must demur altogether to the law of my honorable friend in that respect. The register is nothing but the evidence of the title of a British owner for a municipal purpose in this country. A ship which has a British register, and which is afterward transferred to a foreign belligerent power, cannot, from the mere fact of her still remaining registered in England as the property of a British owner, in any way be justly styled a British ship. Nor can it be said that she has not become what this vessel really is—a public vessel of war. I regret that my honorable friend should have used an argument that may seem to give countenance to assertions which have repeatedly been made, but which are quite destitute of foundation, that these ships are British pirates. They are not British, and they are not pirates. That expression is untrue in fact—dishonorable to this country; and I trust that all those who have the honor of this country at heart, whatever they may see to condemn in the conduct of persons concerned in fitting out and navigating such vessels as those referred to, will not give encouragement to a proposition so extravagant, and so completely without foundation.

I now come to the point suggested by the motion of my honorable friend. He points to the fact that the Georgia is now at Liverpool, under circumstances which show that she has never been in any confederate port. Whether on that account she ought to have been allowed to come in or not I will notice hereafter. The ship, however, came to Liverpool, being at the time a regular commissioned public ship of war. There is no doubt she was entitled to come in in that character by license of the Crown as long as the rules issued by her Majesty in January, 1862, remain unaltered, because those rules permit ships of war belonging to both belligerents to come into our ports under certain restrictions. They must not remain more than twenty-four hours, except for repairs; they must not receive repairs in the nature of warlike equipment, and there are strict limits as to leaving as soon as the repairs are completed. This ship being a public ship of war of the Confederate States is permitted to come into our ports, and so comes in lawfully as a ship of war. The government desired to have information regarding the circumstances under which she had entered our ports, and as to the length of time she was likely to remain. They understood she had been brought into dock, it was presumed, for the purpose of repair, and it was afterwards stated that she was likely to be dismantled and sold. If the latter were the case, there would be no harm done to the other belligerent power by relieving her from all fear of further opposition on the part of the dismantled vessel. On the other hand, if there be no positive pledge that she will not leave as a ship of war, it will be the duty of her Majesty's government to require her to depart as soon as possible. My honorable friend has, however, raised a larger and more general question, for he has asked whether the government think the admission of such ships as he describes that ship to be, consistent with their international obligations, their profession of neutrality, and the preservation of British interests. The government certainly has not considered the limited and qualified

admission of ships of this kind into British ports to be at all inconsistent with their duty in any respect. But for the first element in the case to which the honorable gentleman has called attention, that the vessel was originally manned and equipped from British ports, I think that every one would grant her right to admission into our ports, in the same way, and under the same conditions, as ships of the federal States are admitted. I must, however, notice that my friend has imported into the case a consideration which has been frequently dwelt upon in the various publications issued upon this subject—namely, that the ship has never been in any of the ports of the belligerent power under whose flag she sails. It is argued that this is a circumstance which prevents a ship from acquiring the character of a belligerent ship of war. It has been supposed that there is some rule or other, some settled principle of international law, which will bear out this conclusion. It should not be our practice to invent new rules of international law to suit particular cases, and I may state that such a rule as this was never heard of. To say that a country whose ports are blockaded is not at liberty to avail herself of all the resources which may be at her command in other parts of the world, that she may not buy ships in neutral territory and commission them as ships of war without bringing them to her own country first, is a doctrine which is quite preposterous, and all the arguments founded upon such a doctrine only tend to throw dust into men's eyes and to mislead them. We cannot, therefore, upon those grounds make this ship an exception to our ordinary rules. And now I come to the real question. I have not the least doubt that we have a right, if we thought fit, to exclude from our own ports any particular ship or class of ships, if we consider that they have violated our neutrality, but such power is simply discretionary on the part of the government, and should be exercised with a due regard to all the circumstances of the case. Does the circumstance of a ship happening to have been fitted out in violation of the neutrality of a neutral nation entitle her, in the first place, to be refused recognition as a public ship of war? Happily, we find an answer to this question in the history of the jurisprudence of the United States, and I do not find that the United States, which have really settled all the doctrines of law applicable to this kind of violation of neutrality by fitting out vessels in their ports for belligerent nations, ever adopted the practice of inquiring into the previous history of public ships of war which labored under the suspicion or allegation of having been fitted out in their ports in violation of their neutrality. In the cases of the *Santissima Trinidad*, Mr. Justice Story said:

“In general, the commission of a public ship, signed by the proper authorities of the nation to which she belongs, is complete proof of her national character. A bill of sale is not necessary to be produced, nor will the courts of a foreign country inquire into the means by which the title to property has been acquired. It would be to exert the right of examining into the validity of the acts of the foreign sovereign, and to sit in judgment upon them in cases where he has not conceded the jurisdiction, and where it would be inconsistent with his own supremacy. The commission, therefore, of a public ship, when duly authenticated, so far at least as foreign courts are concerned, imports absolute verity, and the title is not examinable. The property must be taken to be duly acquired and cannot be controverted. This has been the settled practice between nations, and it is a rule founded in public convenience and policy, and cannot be broken in upon without endangering the peace and repose as well of neutral as of belligerent sovereigns. The commission in the present case is not expressed in the most unequivocal terms, but its fair purport and interpretation must be deemed to apply to a public ship of the government. If we add to this the corroborative testimony of our own and the British consul at Buenos Ayres, as well as that of private citizens, to the notoriety of her claim of a public character, and her admission into our own ports as a public ship, with the immunities and privileges belonging to such a ship, with the express approbation of our government, it does not seem too much to assert, whatever may be the private suspicion of a lurking American interest, that she must be judicially held to be a public ship of the country whose commission she bears.”

The ship *Independencia*, to which those words applied, was one by which the United States foreign enlistment act had been violated; and in the case of the *Cassius* also, under circumstances like those of the *Georgia*, it was decided that neither the ship nor her officers could be made amenable to the jurisdiction of the courts of the United States, when she came in, after having taken prizes, in the character of a public ship of war. The other belligerent has, indeed, no concern whatever in the course which the neutral government may think fit to adopt with reference to this vessel; and if the government refused her admission to the ports of the United Kingdom, it would only be done for the purpose of vindicating our authority. I cannot find, however, that the United States ever followed such a course with respect to a ship of this character. The *Santissima Trinidad* and the *Cassius* were both received into the ports of the United States, were held not to be amenable to their courts of law, and were never ordered by the government to leave any port. There are, also, a very considerable number of cases reported in which prizes taken by ships fitted out in breach of the neutrality laws of the United States, and afterwards brought into the ports of the United States, were either restored or questions raised in courts of law as to their restoration; but I

can find no instance of any prohibition or exclusion from any port of that country of any ship, being a public ship of war, which had taken any one of those prizes. We are not, therefore, following the authority of any precedent in the United States, if we exclude this vessel from our ports. The honorable member for Huntingdon has asked if the government think the admission of such vessels to British harbors consistent with our international obligations. This question renders it necessary to determine the precise right of the other belligerent in this matter. Now, upon this question I will quote from another judgment of Mr. Justice Story in reference to the case of the *Amistad de la Ruez*. In discussing this matter, I hope not to utter a single word in the slightest degree offensive to any one in the United States, and least of all to their government; but I cannot help wishing that the authority I have mentioned had been more recollected when, over and over again, those extraordinary and extravagant demands were made upon our government to pay the value of all the ships taken on the high seas by the Alabama and similar vessels. I need hardly remind the House that in 1793, when the United States did give us compensation for certain prizes not restored, that compensation was strictly limited to ships brought into their ports by ships fitted out in violation of their laws, and was not extended to any prizes taken upon the high seas, and not brought into their ports. They did not even restore, or make compensation for, prizes which had been brought into their ports by French privateers fitted out in those ports before the time when they expressly prohibited that practice. All they did was to name a particular date, and prohibit the French from fitting out more privateers, or bringing in any more of their prizes after that date. Mr. Justice Story thus lays down what is the limit of the obligation which the neutral owes to the belligerent in this matter:

"When called upon by either of the belligerents to act in such cases, all that justice seems to require is that the neutral nation should fairly execute its own laws, and give no asylum to the property unjustly captured. It is bound, therefore, to restore the property if found within its own ports; but, beyond this, it is not obliged to interfere between the belligerents."

So that he distinctly says we are to execute our laws fairly; we are to give no asylum to prizes captured by ships fitted out in violation of our neutrality, which are property unjustly captured; but he does not say that an asylum may not be given to public ships of war, whatever their previous history; and he adds that, beyond the limits which he mentions, we are not obliged to interfere between the belligerents. The authority of Mr. Justice Story, therefore, excludes the proposition that belligerents have any rights entitling them to require interference by the neutral to the extent of excluding absolutely from her ports ships of this description, if it does not seem to the neutral herself necessary to do so. I say, then, we have done all which that authority requires us to do. And now I will ask what reasons there are for the hesitation of the government to take the extreme step of absolutely excluding these particular ships from our ports when, at the same time, all the ships of the United States government are admitted. Some reasons can be given; the House will judge of them. I believe they have had considerable influence upon the determination of the government upon this question, and I think they are such as are consistent with an honest desire to maintain our neutrality and fulfil our international obligations. In the first place, the maintenance of neutrality is plainly consistent with the maintenance of our own rights, and I entirely repudiate the argument, which has been sometimes used, that you are not to enforce your own laws, because the effect of doing so may possibly be to put one of the parties to greater disadvantage than the other. Neutrality does not require that you should at all consider that. On the other hand, where you have no law to enforce, then it becomes worthy of consideration whether you may not be weighing down the balance in a manner not entirely consistent with neutrality, if you adopt, voluntarily, a rule which would practically exclude from the asylum you allow in your ports the whole of the navy of one belligerent, and no part of the navy of the other belligerent. That is one consideration. And then there is another. The whole of the honorable gentleman's argument assumes that the facts, and the law applicable to the facts, are substantiated; that we are in a position as between ourselves and the Confederate States to treat the matter as beyond controversy, and to assume that the Georgia was, in fact, fitted out in violation of our neutrality. Now, we may have very strong reason to suspect this, and may even believe it to be true; but to say that we are to act upon strong suspicion, or belief, against another State, upon certain facts which have never been judicially established, and which it is not easy to bring to the test as between government and government, that is a proposition which is not without grave consideration to be accepted. The difficulty of that view is increased by the fact that we have no diplomatic relations with the Confederate States, and cannot communicate with them in the ordinary way. For very good reasons we have not recognized them, and we have not, therefore, the opportunities of intercourse which recognition gives. What is more, the government of the United States, by its ships, bars us from the means of communication which would ordinarily exist without recognition. Only the other day her Majesty's government were anxious to communicate

and remonstrate with the government of the Confederate States, on this very subject, and actually gave a commission to one of our diplomatic servants, a consul, to do so; when it was announced that the blockading squadron, under the orders of the United States government, could not permit even a ship of war of this country to enter into a blockaded port for the purpose of that communication. These circumstances greatly enhance the difficulty of bringing to a practical test the question whether there has been, in this case, a violation of our neutrality. Upon that allegation the whole argument depends; and here, again, American authority by no means warrants the notion that you ought to act lightly, or without cogent proof. In the case of the *Santissima Trinidad*, to which I have before referred, Mr. Justice Story says as to the kind of proof which ought to be insisted on in these cases:

"In a case of the description of that before the court, where the sovereignty and rights of a foreign belligerent nation are in question, and where the exercise of jurisdiction over captures made under its flag can be justified only by a clear proof of the violation of our neutrality, there are still stronger reasons for abstaining from interference, if the testimony is clouded with doubt and suspicion. We adhere to the rule which has been already adopted by this court, that restitution ought not to be decreed upon the ground of capture in violation of our neutrality, unless the fact be established beyond all reasonable doubts."

There, again, is a principle which the confederate government are entitled to have the benefit of, and which makes it matter of serious difficulty to say that because we have very strong moral presumptions and very strong reason to believe that a certain ship of war was fitted out in violation of our neutrality, we are, therefore, to act summarily upon the supposition. You have here a mixed question of facts and of law—the facts to be established by evidence, the law to be decided with reference to the facts; and, considering the controversy which has existed as to the bearing and effect of our law, it is not impossible that in some of these cases the Confederate States may have believed that they were acting within that law. All this increases the difficulty; and now I want to suggest some other reasons.

Of course, if we act according to the suggestions made to us in this case, we must act on the same principles and deal out the same measure to the other belligerent. And if we are to proceed on grounds of moral belief, and do not stop to ask whether they constitute adequate legal grounds of action—if we are to proceed upon information of the kind which carries conviction to the mind—it is impossible, I grieve to say, to acquit the agents of the United States, although we may acquit their government, of acts which, upon a large scale, are inconsistent with our neutrality. The case of the federal ship *Kearsarge* was a case of this character. Beyond all question a considerable amount of recruiting was carried on at Cork for the purposes of that ship, she being employed at the time in our own waters, or very near them, in looking out for her enemy; and she was furnished with a large addition to her crew from Ireland. Upon that being represented to Mr. Adams, he said, as might have been expected, that it was entirely contrary to the wishes of his government, and he was satisfied that there must be some mistake. The men were afterward relanded, but there can be no doubt that there had been a violation of our neutrality. Nevertheless, we admitted the *Kearsarge* afterward into English waters. We have not excluded her from our ports, and if we had I think the United States government would have considered that they had some cause of offense. But it does not rest there. I see from the paper that the honorable member for Horsham (Mr. S. Fitzgerald) wants information respecting the enlistment of British subjects for the federal army. Now, from all quarters reports reach us, which we can not doubt to be substantially true, that agents have been recruiting for the federal army, with or without the concurrence of the federal government, in Ireland, and engage men under the pretext of employing them on railways and public works in America, but really with the intention of enlisting them, and that many of these men are so enlisted. In Canada and New Brunswick the same practices prevail. Representations have been made to the United States government respecting particular cases of persons who have been kidnapped into the service and then forced to fight, or treated as deserters, and I feel bound to say that those representations have not met with that prompt and satisfactory attention which we might have expected. How are we to act in this case? Are we to exclude from our ports all the ships of the belligerent whose agents are believed to have been engaged in these practices? practices which, whatever may be the intention of the United States government, operate largely to supply their ranks with British subjects in violation of British law. If we are to act in the one case upon suspicion, or upon moral belief going beyond suspicion, it would be difficult to say that we ought not to act so in the other. But in what difficulties we should entangle ourselves were we so to act, not being bound to act by any international obligation! What may fairly be asked is that we should do all we can to enforce our own laws within our own jurisdiction: if we do this, we may abstain from doing more, unless, for our own reasons, we find it expedient. That is the course which the government have taken; that is the course to which they will adhere; and, in view of the difficulties I have mentioned, I think it is a course which is fully

justified. There is one other consideration of importance which I wish to mention; and here again I hope that what I say will not cause offense in the United States, for I state it because it is true, and because it is important that the matter should be understood. The British government are not assisted by the government of the United States in matters of this description. The demands which the United States government make upon us go so far beyond the limits of anything they can be entitled to ask, according to any recognized rules and privileges of international law, that it becomes absolutely necessary that this government should exercise great caution indeed before they do acts which might possibly be misunderstood and might give foundation to the idea that they were done under a supposed necessity of complying with demands of this kind. The House well knows that I refer to the extraordinary demands arising out of the case of the Alabama. I have no hesitation in saying that the United States government, by advancing such demands and by seeking to make our government responsible for pecuniary compensation for prizes taken by the Alabama upon the high seas, and never brought within our ports or in any way whatever under our control, are making demands directly contrary to the principles of international law laid down by their own jurists; and thereby they render it infinitely more difficult for us, at their request, to do anything resting on our own discretion, which we are not bound to do in law. What we may fairly say, and what we do say, is this: "We will adhere to the rules laid down by your own authorities. We will execute our own law. We will allow no asylum to prizes or to property unjustly captured. If any such are brought in, any demand for their reclamation shall be investigated. But we will not undertake to recognize claims going beyond these limits. We will not undertake to interfere between belligerents in any other way than that in which we can be shown to be obliged to do so, by the rules of international law, and the recognized obligations of neutrality."

Mr. W. E. FORSTER said that the strong sympathy which he felt with one of the parties in the American contest might have enabled him to obtain information which otherwise he could not have procured; but he should endeavor to treat the question before the House solely from an English point of view, and in an impartial manner. The instructions issued by the admiralty with reference to the ships of either of the belligerents which might enter any of our ports were as follows:

"If any ship of war or privateer of either belligerent shall enter any port, roadstead, or waters belonging to her Majesty, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs, in either of which cases the authorities of the port, or of the nearest port, (as the case may be,) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in such port, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed."

The honorable and learned attorney general had referred to the case of the Georgia, but he had hardly explained why she had been permitted to stay at Liverpool in the manner she had remained there. There was scarcely a colorable ground for alleging that the Georgia went into Liverpool for repairs. She came over from the coast of France, where she had been staying thirty days in the port of Bordeaux for the purpose of undergoing repairs, and she came ostensibly to England for the purpose of paying off her crew. He should like to ask whether a federal vessel of war would be allowed to pay off its crew in one of our ports with the same amount of accommodation as had been given to the confederates. It was said that no one would have a right to call this vessel a British pirate; he (Mr. Forster) had never called any of those vessels by that name, but they must remember what the Georgia was. The Georgia was a confederate vessel which notoriously had been built in England and sailed from Scotland, having on board at the time she sailed a crew solely composed of British subjects, with two exceptions, and of those exceptions one was a man belonging to Sweden, and the other to Russia. She received on the coast of France her equipment from England, and was owned by an English merchant for months after she began to take prizes. The certificate states that she was sold to a foreigner on the 23d of June, 1863; and though the attorney general seemed to think very little of the matter, he would perhaps correct him (Mr. Forster) if he was wrong in thinking that the fact of being upon the custom-house register as owned by a British merchant gave her the right of application to British consuls in foreign ports until that register was cancelled. Lastly, this ship, having never been into a confederate port, had come back to Liverpool under the pretense of paying off her crew. The attorney general had said that it made no difference whether she had been in a confederate port or not. He, (Mr. Forster,) however, thought that it did, because it established a precedent which might be used against this country in the future if it happened to be at war, and this brought them to the point. Had the government done all they could on behalf of English interests, and in consideration of

their position hereafter? He hoped the House would seriously apply themselves to that part of the question, whether the facility that they had given as neutrals to that vessel would not tell against them in the future, if by an unfortunate circumstance they became involved in war? That question might be divided into two parts: first, whether the international law as between England and foreign countries could be put upon a better footing; and whether all had been done that could be done under the existing law, so as to merit in the future that neutrals should behave to us as we should wish to be treated?

With regard to the alteration of the law, the attorney general had given some reasons why it should not be altered; but he did not seem to meet the real point of the question. By that sorrowful war they had an opportunity of putting the international law of the world upon such a footing as would benefit not only England, but civilization in the future. An opportunity presented itself which he feared had been lost, but it was for them to see whether it had been lost altogether or not. In the history of international relations, two countries had advocated the rights of neutrals against belligerents—America and France. Now, America, being a belligerent, had asked England to join her in improving the maritime law; and no one would deny that England was in that position that France would have followed her lead in this matter. He might be told that the United States had not honestly and candidly shown a desire to come to such agreement with us; but he thought he could show that she had. On the 19th of December, 1862, Earl Russell wrote to Mr. Adams to the effect that in the opinion of her Majesty's government, certain amendments might be introduced in the foreign enlistment act, and that it was willing to receive from the government of the United States suggestions as to what amendments might with advantage be made in the foreign enlistment act of each country. Mr. Adams did what he could; he sent the suggestions home to his government; and all that he (Mr. Forster) found further in our blue-book respecting it was a dispatch of Earl Russell to Lord Lyons, of 29th February. In that document, he said, Mr. Adams intimated that, while the United States government was ready to listen to any proposition on the subject, they did not see how their law could be improved. It was quite true Mr. Adams had said the government of the United States thought their law effective, experience having shown it to be so. He (Mr. Forster) believed it was admitted by the law officers of the Crown that the American law was stronger than ours, especially upon the point where ours had failed; but it was proved by papers which had been laid before the American Congress, that the matter had gone a little further than appeared in our own blue-book. The following was a letter of Mr. Adams to Earl Russell, dated September 16, 1863:

"It will doubtless be remembered that the proposition made by you, which I had the honor of being the medium of conveying to my government, to agree upon some forms of amendment of the existing statutes of the two countries, in order to make them more effective, was entertained by the latter not from any want of confidence in the ability to enforce the existing statute, but from a desire to coöperate with what then appeared to be the wish of her Majesty's ministers. But upon my communicating this reply to your lordship, and inviting the discussion of the proposition, you then informed me that it had been decided not to proceed any further in this direction, as it was the opinion of the cabinet, sustained by the authority of the lord chancellor, that the law was fully effective in its present state."

Was the attorney general or the solicitor general prepared to say, after the experience they had, that "the law was fully effective in its present state?" The following was the reply of Earl Russell to Mr. Adams, which had not been published, and which was dated September 25, 1863:

"I deem it incumbent on me, on behalf of her Majesty's government, frankly to state to you that her Majesty's government will not be induced to propose to Parliament any new laws which they may not, for reasons of their own, think proper to be adopted."

He (Mr. Forster) took it for granted that they were all agreed that no law should be proposed to the House except from an English point of view and on consideration of English interests; but he was surprised that her Majesty's government had not considered how terribly such a state of things as the present would react upon the future interests of this country. Reasons of their own should have induced the government to put this great question of international law upon a more satisfactory footing. They should have taken the opportunity to obtain from America and France, the great protectors of neutral rights, such an international law as would make it impossible for this country in future to be subjected to what America was now suffering from them. Let the House consider what would be their position if they were to experience the same treatment from a foreign country that America had received at their hands. He would not appeal to the case of America herself, because some people might say that whatever principles of international law we might agree to America would not abide by them. This he did not believe to be true, and he thought it might be shown to be untrue by past examples. It was impossible, at all events, to charge the government of America with any unfair conduct in letting their subjects prey upon English commerce. Let them recollect the case of the *Maury*. The only other case which had

been referred to was that of a vessel which it was said had been fitted out to prey upon British commerce during the war with Russia; but that vessel was not armed for such a purpose, and left America after the fall of Sebastopol. It did not appear that any representation had been made anywhere by the British government that she was ever used for belligerent purposes, and there were affidavits to prove that she had not been so used. On the other hand, they had this fact, that when some subjects of America did engage in unjustifiable proceedings in connection with the Canadian rebellion, the government of America brought in a most stringent law to put an end to them. Therefore, the assertion that the American government would not keep any engagement with them in future was not justified by the past. Let them not suppose that the precedent they were then setting as a neutral would not be used against us by every neutral power in the future whenever we might be at war. Take the case of a possible war with Germany. Nobody would more deeply deprecate such a war as that than himself, or look upon it with greater horror; but to judge from the language of some of the newspapers, and from some speeches, there were persons who looked upon such a war without any particular feeling of horror. Supposing such a war should unfortunately arise, what would be our feelings if, when by our overwhelming naval force we fancied that we had made every German port safe, one vessel should steal out of Marseilles, and another out of Brest, and that, meeting on the coast of Italy, one of them, shipping a crew and armament from the other, should be converted into a cruiser to sail off and destroy British merchantmen in the Mediterranean or wherever she could find them? Should we allow France for a moment to do that? Certainly not, if we dared to prevent her; and with our usual pluck we probably should dare, unless the war were a struggle for our very existence—such a death struggle in fact as the Americans were then engaged in. That precedent, if we allowed it to be established, meant for us a second war whenever we had a war on our hands, unless we were fighting for our existence, and did not dare to undertake another war. "What a wretched navy," it was said, "the Americans must have, not to put these two or three cruisers down!" But it was a comparatively easy matter to carry on operations of this kind. All that a ship of that character had to do was to attack vessels which could not resist her, and run away from those which could. There was not the slightest occasion for them ever to fight a battle. If this country were at war, and if temptations were held out to foreign ship-owners, there could be no doubt that, considering the large extent of English cargoes, there would, instead of three or four, be more than thirty ships engaged in preying upon their commerce. It would be a very cheap game to carry on. The persons engaged in it, if they were taken, were only prisoners of war; if they were not taken, they made their fortunes. Was it to such risks that they would wish to expose British trade? Our merchants at first were disposed to triumph in the fact that the carrying trade of the United States was being transferred to them, but it was clear now that they had found out that present gain would not be balanced by the probable future loss. In a well-known letter, addressed by Mr. Edge to Earl Russell, he stated that the effect up to that time had been that one hundred and forty-eight American vessels had been taken, and two millions and a half of property destroyed; and that was only a portion of the injury which had been done to American commerce, for the premium of insurance had been raised from five to ten per cent., and the American carrying trade had been transferred to other nations, principally to this country. There could not be a stronger illustration of the damage which had been done to the American trade by these cruisers than the fact that, so completely was the American flag driven from the ocean, the Georgia, on her second cruise, did not meet a single American vessel in six weeks, though she saw no less than seventy vessels in a very few days. If we did not take care to settle the international law before a war began, our merchants would be obliged to transfer their ships to foreign flags. Two other results would follow: first, a number of their sailors would be thrown out of employment, and the sources of their navy would be dried up, because their sailors, after a time, would take service in foreign ships. He thought the ministry should have considered that it was no question of sympathy with either North or South. It was no question of submitting to the dictation of a foreign power. If they interfered they would be only manifestly doing what was demanded for the protection of British interests. At the meeting of Parliament the government should have come forward and said that if the law was effective it was most difficult to carry it into operation; and that an opportunity was afforded them, which they might never have again, of establishing their position for the future. He sincerely regretted that the government had not discerned how excellent an opportunity had been afforded for that purpose. The question put by the honorable gentleman opposite was whether these particular ships, which had notoriously eluded our neutrality, should be admitted into our ports and receive the same hospitality as the ships of any other belligerent. The attorney general had turned that into a question, whether the whole navy of the confederates should be excluded from our ports because one of them had broken our neutrality. The honorable and learned gentleman asked if they would, because men had been enlisted in Ireland by the agents of the United States, therefore exclude

the federal ships from British harbors. But the cases were not similar at all. If they found that agents of the United States government were enlisting men in Ireland, they should express their disapproval of it, and say that such agents should never tread on British ground again. But while they did that they might very fairly say also that vessels which left our ports in breach of our neutrality should not be allowed to return to them. Surely the attorney general did not mean to contend that in our representations to other nations we were obliged to be armed with the same proof as we should require in the case of one of our own people who had committed an offense against the law. Were there not sufficient grounds for saying that we ought not to be required to extend to the vessels in question the same degree of hospitality which we would gladly afford to ships which had not broken our neutrality? Then came the point as to what course our interest called upon us to take in the matter; and was it not, he would ask, clearly our interest to prevent the invasion by neutrals of the rights of belligerents by taking those steps which he understood the honorable and learned gentleman to admit it was in our power to adopt? If, then, it was only a question of discretion, he would ask the honorable and learned gentleman and the cabinet to consider English interests, and also to consider the enormous advantage they would enjoy in future from now adopting a course based upon the true principles of international law. He wished to add a word with respect to international law. He did not profess to be able to define what that law was according to precedents; but even a layman might be permitted to state his views in reference to it as based upon the principles of common sense; and what he understood its great object to be, as operating between belligerents and neutrals, was, that there should be such an arrangement between nations that an individual in a country should not be allowed by the sovereign power of that country to carry on war with other states without the leave of the government. There was, he maintained, the greatest possible difference between selling munitions of war to either of the parties in a contest and the sending out armed ships from our ports; for in the one case a neutral country was made the basis of hostilities; whereas in the other it was not. He had no wish to enter into the question whether the federals had received from us a larger quantity of the munitions of war than the confederates, though that was a point more open to doubt than some honorable gentlemen opposite seemed to suppose; though of course the federals had received them more easily than the confederates, from the fact that the confederates had no navy. That was their weakness, it was true; but in war weakness was a fault, and we might very well say to both belligerents when either complained of our furnishing the other with munitions of war, "It is no fault of ours if you do not stop them, and prevent them from being carried into hostile ports." When, however, it came to be a question of armed ships leaving our own ports, the matter assumed a different aspect, because the only way in which a belligerent could stop them was not by blockading the ports of another belligerent, but the ports of the neutral power from which they sailed. Let him, however, suppose that the port of Liverpool was blockaded by the United States Navy for the purpose of preventing these vessels from leaving it, could any one imagine that we could remain at peace with America? Such, then, being the position of the case, it was evident that if the government could succeed in obtaining such concessions as he had indicated, and if neutrals were prevented from allowing their subjects to carry on war, they would not only be promoting our interests, but advancing the interests of civilization. He trusted, therefore, that the discussion raised by the right honorable gentleman opposite, with an authority which scarcely any other member of that House could command, backed as he was by the strongest possible memorial from the ship-owners of Liverpool, would impress upon the government the necessity of not allowing the opinions which had been expressed to pass by without endeavoring to place us in a better position than that in which we seemed to stand in the event of our unfortunately becoming belligerents ourselves.

Mr. COBDEN. I will only occupy the attention of the House but for a very few minutes. I wish to say a word or two in reference to what has fallen from the attorney general. Two questions have been brought under our notice by the statement of the honorable gentleman who introduced this subject. The suggestions which he makes are that we should alter our foreign enlistment act, and that we should, in the exercise of the powers which it is conceded we possess, prevent vessels of the description referred to from entering our ports. With respect to altering our laws, the attorney general has entered into a long argument to show that the law as it stands is effective for the purpose of preventing a breach of our neutrality; but I cannot imagine a more cruel joke than the honorable and learned gentleman's speech must appear when it comes to be read at Washington. What is the fact? You have been carrying on hostilities from these shores against the people of the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about \$15,000,000, or nearly £3,000,000 sterling. But that is a small part of the injury which has been inflicted on the American marine. We have rendered the rest of her vast mercantile property, for the present, valueless, under the system of free

trade, by which the commerce of the world is now so largely carried on. If you raise the rate of insurance on the flag of any maritime power, you throw the trade into the hands of its competitors, because it is no longer profitable for merchants or manufacturers to employ ships to carry freights when those vessels become liable to war risks. I have here one or two facts, which I should like to lay before the honorable and learned gentleman, in order to show the way in which this has been operating. When he has heard them, he will see what a cruel satire it is to say that our laws have been found sufficient to enforce our neutrality. I hold in my hand an account of the foreign trade of New York for the quarter ending June 30, 1860, and also for the quarter ending June 30, 1863, which is the last date up to which a comparison is made. I find that the total amount of the foreign trade of New York for the first mentioned period was \$92,000,000, of which \$62,000,000 were carried in American bottoms and \$30,000,000 in foreign. This state of things rapidly changed as the war continued, for it appears that, for the quarter ending June 30, 1863, the total amount of the foreign trade of New York was \$88,000,000, of which amount \$23,000,000 were carried in American vessels and \$65,000,000 in foreign—the change brought about being, that while in 1860 two-thirds of the commerce of New York was carried on in American bottoms, in 1863 three-fourths was carried on in foreign bottoms. You see, therefore, what a complete revolution must have taken place in the value of American shipping; and what has been the consequence? That a very large transfer has been made of American shipping to English owners, because the proprietors no longer found it profitable to carry on their business. A document has been laid on the table which gives us some important information on this subject. I refer to an account of the number and tonnage of the United States vessels which have been registered in the United Kingdom and in the ports of British North America between the years 1858 and 1863, both inclusive. It shows that the transfer of United States shipping to English capitalists, in each of the years comprised in that period, was as follows: In 1858, thirty-three vessels, 12,684 tons; 1859, forty-nine vessels, 21,308 tons; 1860, forty-one vessels, 13,638 tons; 1861, one hundred and twenty-six vessels, 71,673 tons; 1862, one hundred and thirty-five vessels, 64,578 tons; and 1863, three hundred and forty-eight vessels, 252,579 tons. I am told that this operation is now going on as fast as ever. Now, I hold this to be the most serious aspect of the question of our relations with America. I care very little about what newspapers may write or orators may utter on one side or the other. We may balance off an inflammatory speech from an honorable member here against a similar speech made in the Congress at Washington. We may pair off a leading article published in New York against one published in London; but little consequence, I suspect, would be attached to either. The two countries, I hope, would discount these incendiary articles or these incendiary harangues at their proper value. But what I do fear in the relations between these two nations of the same race is the heaping up of a gigantic material grievance, such as we are now accumulating by the transactions connected with these cruisers; because there is a vast amount of individual suffering, personal wrong, and personal rancor arising out of this matter, and that in a country where popular feeling rules in public affairs. I am not sure that any legislation can meet this question. I candidly confess I do not think that if you were now to pass a law to alter your foreign enlistment act you would materially change the aspect of this matter. You have already done your worst towards the American mercantile marine. What with the high rate of insurance, what with these captures, and what with the rapid transfer of tonnage to British capitalists, you have virtually made valueless that vast property. Why, if you had gone and helped the confederates, by bombarding all the accessible seaport towns of America, a few lives might have been lost, which, as it is, have not been sacrificed, but you could hardly have done more injury, in the way of destroying property, than you have done by these few cruisers.

Well, I turn to another point that has been opportunely raised by the honorable gentleman—I mean as to the practicability of refusing hospitality to these ships. I regard that as a very important question. I alluded to it twelve months ago in this House, and I still think that that is a step which the government might take with advantage to our future relations with America. But when I hear what the honorable and learned gentlemen says in opposition to that view, I confess I am perplexed beyond measure by his argument. He made a very long and elaborate statement to show that we were not entitled to refuse hospitality to these ships. He admitted, indeed, that we had the right to do it, but he contended against the expediency of our exercising that right. Now, this is a question for the government, and not for the legislature; and therefore I wish to impress its importance on the government. The honorable and learned gentleman wound up by saying he thought they had better wait until they saw whether the House of Commons was quite prepared to support them in any alteration of our law. I will only say it struck me, when I heard that, that we clearly had not a Washington at the head of affairs, because that certainly was not the way in which Washington earned the tribute of our applause for the course that he took. The government admit, through their legal adviser, that they have the power, if they choose to exercise it, to prevent these vessels from entering our harbors; but the honorable and learned

gentleman doubts the expediency of exercising it; and his reason is, that he thinks we have not clear proof of guilt. This brings me to a striking piece of inconsistency on the part of the honorable and learned gentleman. He begins with administering a solemn exhortation, and something like a solemn reproof, to English ship-builders for infringing our neutrality laws and disregarding the Queen's proclamation by building these ships. Well, but if they are violating our neutrality and disregarding the Queen's proclamation, it must have been because they built these vessels for a belligerent to be employed against some power with which we are at peace. The honorable and learned gentleman assumes that these individuals are guilty of these acts. He knows they have been guilty of these acts. He knows that these three vessels in particular, and the Alabama more especially, have been built for the confederate government, and employed solely for that government, and yet he doubts the expediency of stopping them from entering our ports. He speaks as though we were asking that he should send out ships of war to order away these vessels without trial. He says there must be legal proof; but it does not require legal proof to warrant you in telling a government, "You have got these vessels clandestinely; you got them by the infringement of our neutrality code, or at least, we suspect you, upon fair grounds, of doing so; and unless you prove that they came legitimately into your hands, we must refuse them the hospitality of our ports." Why, how do you act in private life? You hear charges and reports compromising the honor of your acquaintance or friend. You may have a moral conviction in your mind that that individual's honor is compromised, but you may not have legal proof of it, and still you may be quite justified in saying to him, "Until you clear up these charges, which on the face of them criminate you, I must refuse you the hospitality of my house." I hold that you have the right to say the same thing in regard to these cruisers. But what was the course of the government in the case of the Alabama? They told Mr. Adams, the American minister, that they should give orders to stop the Alabama either at Queens-town or at Nassau. Therefore the principle was recognized in the case of that vessel that you had a right to stop her when she reached your jurisdiction. I say, therefore, in the same way, prevent their entering your harbors until they give an account of themselves, to show how they became possessed of that vessel. This has a most important bearing, and one so apparent that it must be plain to the apprehensions of every honorable gentleman who hears it. If the people of the United States are to be told that not only do individuals here fit out cruisers to destroy their commerce, but that our government will allow these cruisers themselves to enter our harbors, and there to be equipped—civilly equipped I mean—and victualled, see in what a predicament you place yourselves towards that country, in case you are ever again engaged in war. Recollect her geographical position. She has one sea-coast in the Atlantic and another in the Pacific, and her Pacific coast is within about a fortnight's steaming of your China trade. Let any man read the shipping list at Shanghai. It is almost like reading the Liverpool shipping list. Suppose, then, you were at war with any other power, and you had laid down this doctrine for other countries to imitate: Why, let the American government be as true and as loyal to its principle of neutrality as it has been, can you doubt, if American nature is human nature, if American nature is English nature, that out of their numerous and almost inaccessible creeks and corners there will not be persons to send forth these fleet steamers to prey on your commerce? Why, many Americans will think it an act of absolute patriotism to do this. They will say, "We have lost our mercantile marine through your doing this, and by doing the same towards you we shall recover it again, and you will be placed in the same position as we were. You will have a high rate of insurance; you will be obliged to sell your ships; you had the profit before, now we shall have it, for the game is one that two can play at." Consider the disadvantage you will experience under those circumstances. We understood the importance of this at the commencement of the Crimean war. In April, 1854, when war was declared with Russia, the British and French governments sent a joint note to the American government, in which we asked them, as an act of friendly reciprocity towards us, to give orders that no privateers bearing the Russian flag should be allowed to be fitted out, or victualled, or equipped in American ports. Recollect that the words "equipped" and "victualled" were contained in the request which we addressed to the American government. And this leads me to make a remark with reference to a most important point—I mean as to the distinction drawn by the honorable and learned gentleman between a government ship of war, carrying a commission, and a privateer. That is a question of the utmost importance to us. We have been in a fool's paradise for the last seven years. We have believed that the conference of Paris achieved a great work in the interest of civilization—that it abolished privateering. Now we find that that was nothing but a stupendous hoax. For, what is the Florida? What is the Alabama? What is the Georgia? Why, they are not privateers at all. I remember that the honorable member for Liverpool who sits opposite—I wish to distinguish him from his colleague—I remember that he made a speech lately at Liverpool, in which he said that if the Americans had only joined in the declaration of Paris against privateering they would not have been placed in their present predicament; and the honorable gentleman led

his hearers, the ship-owners of that port, to believe that if we got into a war we could not be retaliated upon in the same way as the Americans were, because we were under that safeguard which had forever abolished privateering. Well, let us take the case of the Florida as an example, and look at her history for a moment. She was off the coast of Ireland, and went across to Brest. On her way thither she burnt an American merchant ship, and therefore went into Brest red-handed. At Brest she claimed to be allowed to civilly equip and victual. The *Opinion Nationale* immediately put forth a leading article, denouncing the Florida as being what the French call a *corsaire*, and what we term a privateer. Thereupon the commander of the Florida wrote a letter to the Paris newspapers, declaring that M. le Redacteur was under a great delusion in supposing that his ship was a privateer, and stating that she bore a regular commission of the confederate government, and that he and all his officers were regularly commissioned officers; that, in fact, the Florida was a regular ship of war. On the publication of that letter, Mr. Dayton, the American minister at Paris, took the affair in hand, and in the dispatches on our table between Mr. Seward and his representatives abroad we have the whole correspondence that took place between Mr. Dayton and the French government. Mr. Dayton called the attention of M. Drouyn de Lhuys to the circular addressed to the American government in 1854, at the breaking out of the Crimean war, and told him in effect, "You and England jointly requested us not to allow any privateer to equip or victual in our ports, but here is a vessel that is either a privateer or nothing; she makes no war on armed vessels; she goes about burning and destroying merchant ships, and she does not profess to do anything else, because she is neither armed nor manned in a way to act as a regular ship of war." M. Drouyn de Lhuys and the English government appear both to have come to the same conclusion, that the Florida, as well as the Alabama and the Georgia, is a regular ship of war; but Mr. Dayton, in communicating with his own government, fairly stigmatized the declaration of Paris as "mere moonshine," and Mr. Seward, in his reply, indorsed his language. I mention this to show that it will not save us, in case we are engaged in war, from having reprisals practiced upon us; that we have joined in the declaration of Paris; and I am glad that upon this point the honorable member for Liverpool has not succeeded in misleading his constituents, because they appear to take a very sound and far-seeing view of the question. I am only sorry, indeed, that two years ago our ship owners did not rise *en masse* and compel the government of this manufacturing and mercantile country to put our laws and regulations in harmony with the present state of our interests and relations; for I hold we are not here to stand up like lawyers and quote pedantically from the reports of 1810 and 1812. We are living in a progressive age, and in a most progressive country; and let me tell the government that we have now five times as much at stake as we had at the beginning of the century. Our exports and imports are five-fold what they were at the time when those authorities spoke whom the attorney general has cited; and I maintain that it is in the power of any country, but especially in the power of great countries, to lay down maxims and establish precedents which themselves become international law. We have, unhappily, lost a precious opportunity of putting ourselves in a better position for the future, if ever we intend to go to war again. Nor is it merely in time of war that we shall feel the effects of the existing state of things. Do you suppose that foreign governments do not observe what is going on, and do not fully appreciate our altered circumstances? I might apply that observation to other matters and ask why we scatter our forces all over the world, and then think we are as safe and powerful at home as if we had those forces under our wing. But, confining myself to the question of belligerent rights, I say that foreign governments will take into account the danger we must incur in case of war, and will find in it a motive for our remaining at peace. Look at what happened last autumn. We held out what was supposed to be a threat, that, in conjunction with France, we should go to war with Russia on the subject of Poland. What did Russia do? She sent her fleet immediately to America, and, knowing the astute, long-headed men who rule in St. Petersburg, does anybody doubt what the motive was? The Russian government reasoned thus: "If England and France are going to attack us again, we will take care not to have our fleets blockaded in Cronstadt and Sebastopol as they were during the Crimean war; but to be in a position to carry on reprisals, and particularly we will carry on operations against the commerce of England, in the same way as the confederates are carrying on war against the commerce of the United States." Therefore they sent their fleet, and, what is still more important, they sent their crews to America, no doubt with the intention of putting those crews into the swiftest vessels that could be obtained both on the Atlantic and on the Pacific side, in order that they might be employed against our commerce. Take the case of Germany. Recently the German newspapers have often pointed to the vulnerability of England, in consequence of the state of the law as established by ourselves in the case of these cruisers. We have, in truth, set a most perilous example, the disadvantageous effects of which, I believe, will be felt in our Foreign Office in negotiations with Brazil, or the weakest power we could have transactions with. Such has been the result of building three or four swift sailing vessels! Are we to be

told that England is so much superior to America in mechanics that she can build ships which America cannot? Read the report laid on the table by Mr. Whitworth when he went to America ten years ago to inquire into its mechanical resources. Nobody who knows the aptitude of the American people for mechanical discoveries will lay claim to any superiority on our part. Do you want an Alabama, a ship that was built neither for war nor for trade—a vessel that can run away from anything or catch anything? America can produce any number of such vessels. When I went first to America, nearly thirty years ago, they were running steamers on their rivers at the rate of eighteen miles an hour, a thing unheard of elsewhere. The Americans have never done much in the way of ocean steamers; their specialty is on their rivers and lakes, where we find the swiftest vessels in the world. But is it supposed that because we have more ships of war therefore we are sure, in case of war, to find their cruisers? Perhaps nothing is more difficult, not to say impossible, than to find a ship on the ocean after she has once got out of sight. Nelson himself passed many months trying to find a fleet of five hundred sail going from France to Egypt. You may find a vessel in a harbor just as Nelson found the French fleet at the Nile; but even if you should find an American cruiser in a harbor, by your own rules you must allow her to escape, because you say she must have a start of twenty-four hours. It appears to me, on the whole, that the only thing remaining that you can do to conciliate the American people under the cruel losses they have undergone at your hand is to say that henceforth you will deny hospitality to vessels that have been built in your ports, that have clandestinely left your ports, that have been manned and armed from your ports, because you are convinced that to allow such ships to come back here after committing havoc upon a friendly nation would be not only to fail in your duty toward others, but to pursue the course most likely to injure yourselves and endanger your own best interests in the future.

LORD ROBERT CECIL. The present hour and the present state of the House do not invite discussion, but the speech we have just heard contained a fallacy which I cannot allow to pass without notice. The honorable member for Rochdale has drawn a powerful picture of the evils to which England will be exposed in any war in which she may be engaged hereafter. I do not think he has exaggerated those evils, for I am afraid that, in the event of war, we must reckon upon seeing our mercantile marine harassed on the ocean by swarms of hostile privateers. But the point which the honorable member seems to have overlooked is the impossibility of our avoiding the evils in store for us by any action we could take now. If by sending the Alabama or the Georgia away we could insure ourselves against the risks which the honorable member has so eloquently painted, I should at once admit that there was great cogency in his arguments; but I cannot conceive how anybody can imagine that, by refusing hospitality to a confederate ship, we could add one iota to the safety of our mercantile marine in any future war. You say that you desire to set the Americans a good example. Do you mean seriously to tell me that when hostile passions are aroused, when men are driven by their feelings, or still more by what they consider an overwhelming interest, toward a particular line of conduct, they will care about imitating your example? Do you mean to say that the Americans, who, whatever have been their merits or demerits have never been very particular as to how they contend with other nations, who certainly were not very particular in their dealings with us in Canada—do you mean to say that they will care two straws whether we did or did not, at some previous period, act in a manner which they deemed hostile to themselves? But I will remove the question from this American dispute. Look at what has happened between other nations. Are France and Russia any the less likely to unite now because they hated each other bitterly in 1853 and 1854? Are England and Denmark, who hated each other bitterly during the great war, on that account less sympathetic or friendly now? Nations in selecting their policy are not affected by events which may have taken place five, ten, or fifteen years before. Gratitude or indignation may last in the breast of individuals for so long a period, though even that is a rare phenomenon, but I am quite sure that you can find in the history of the world no instance in which those feelings have endured so long in the breasts of nations. To go from example to precedent. We have heard a great deal about precedent from both the honorable member for Bradford and the honorable member for Rochdale. They say that we ought to set up a precedent which shall change international law. I confess that sounds to me very strange language. We heard from the attorney general, stated with the greatest eloquence and clearness, what international law is. You say to us, "Don't keep to that; don't keep international law as it is, but by the process of breaking it make it something else, and your reward for so breaking it shall be that other nations, instead of breaking it, will keep it, and keep it in the way which will be advantageous to you in future wars." I confess that that is a process which I do not think that other nations are very likely to go through. At all events, if they follow our example in nothing else, they will follow our example in the convenient plan of amending international law by the process of breaking it. But there is something more to be said. You profess neutrality, and I presume that you intend that neutrality to be honest. I presume that even the

honorable member for Birmingham, (Mr. Bright,) strongly as he feels upon the subject, will not recommend us to depart from strict neutrality. But can there be a greater breach of neutrality than that you should break international law on the one side and not on the other; that you should alter international law by so breaking it, and that entirely in favor of one belligerent? And what adds to the peculiar baseness of such a proceeding is, that you are asked to take this course, not because you believe that one side is right and the other wrong, but solely that it may give you an advantage in some future war. I confess that such a mode of dealing with international law appears to me more dishonest and more immoral than anything I ever before heard proposed in this House. The honorable member for Rochdale told us a great deal about the bitter feelings of the inhabitants of the federal States at the losses they have endured. He counted up those losses, and asked us to believe, as we well could, that a race come of the same stock as ourselves would be operated upon more strongly by the bitterness of feeling occasioned by these losses than by any other motive. I thoroughly believe it. I dare say that for many years those nations will feel bitterness toward the nation through whose instrumentality they believe that they have been inflicted. But have there been losses only on one side? Has there been suffering only on one side? And has British aid been given only to one side? I have in my hand a paper which tells a different story, and to the tale which it tells I invite the attention of the House. In the course of the year 1862 there were exported to the federal States rifles and muskets of the value of £546,000, besides eleven million nine hundred and forty-seven thousand, or in round numbers twelve million percussion caps. What the Americans have done with all those caps I cannot imagine. I believe that, according to the most recent authority, they have killed two hundred thousand confederates. That allows sixty shots for each man killed, which undoubtedly is not very good practice. [Lord Robert Montague; Yes it is.] My noble friend says that it is. I trust that in any war in which we may be engaged he will wield his weapon with more effect. I cannot pass over the fact which has been stated in this House, and is well known, that the mercantile house which has been mainly instrumental in conveying this enormous assistance to the federals, and effecting this fearful injury upon the confederates, is the house of Baring & Co. Now, I want you to consider the feelings with which the confederates regard these enormous reinforcements, which have been conveyed by the English people through the hands of Messrs. Baring & Co., in violation of her Majesty's proclamation of neutrality. [Mr. Cobden: Not in violation of the law.] The attorney general is not here to inform us as to the law, and I will adhere to my statement until it is contradicted by some more competent authority. Whether contrary to law or not, it is an enormous assistance conveyed through the house of Messrs. Baring & Co. by the English people to the federals. You have been considering the feelings of the federals. Do you suppose the confederates have no feelings? Do you suppose they do not feel for their rich country desolated, for the enormous injury which has been inflicted upon their industry, for their towns bombarded, for their population slaughtered, and for the fearful trials to which every class of their people have been exposed? And do you suppose that when they learn that all this havoc has been committed through the instrumentality of munitions of war conveyed by English merchants the bitterness on one side will not be as great as that on the other? If our neutrality is honest, we must regard the bitterness of one side as much as that of the other. I am sure that, considering what in the future are likely to be the opportunities of greatness offered to the two divisions in which the American republic is fast dividing, that we shall have as much cause for regret if we permanently alienate from England the inhabitants of that vast country which lies to the south of the Potomac as we shall have if we alienate those who inhabit the smaller country which lies to the north of that river. We cannot give too much praise to the very learned and moderate speech of the attorney general. It seemed to me to give an exhaustive and complete statement of the law, comprehensible by the least instructed intellect; and I hope that it will be accepted as an official reply to many fallacies upon this subject which have been current in this country. I will only express my regret that, after that speech, the honorable member for Rochdale should have repeated the statement that it was proved that the Georgia came out in violation of our neutrality. Why, you have not even got a verdict. It will be time enough to talk about the law being broken when you have got any court of law to pronounce in your favor. The only court which pronounces in your favor is that which sits in your own brains. There is not a ghost of a justification for saying that the Georgia has broken our foreign enlistment act. All the facts are against you. It is probably well known to the honorable member for Rochdale that it is quite as much within the international law to sell ships of war to another nation as it is to sell any munitions of war. There seems, therefore, to be no ground for the statement that the Georgia has invaded our ports in defiance of our neutrality, and we should ourselves be guilty of a clear breach of neutrality if we shaped our policy on an assumption which cannot be proved either in law or in fact.

Mr. SHAW LE FEVRE said that the noble lord in admitting the novelty in war of such cases of the Georgia and the Alabama, had conceded the very basis of the argument of the honorable member for Huntingdon. It was to prevent such cases becoming a recognized

usage of war for the future that he ventured to urge upon the House and the government the importance of all that we now could do to remedy the evil effects of them, and to prevent their recurrence. He had listened with great regret to the speech of the honorable and learned attorney general, and especially to his statement that he was not prepared to recommend her Majesty's government to take either of the courses suggested by the honorable member for Huntingdon. Probably, if the honorable and learned gentleman had paid more attention to the history of America and less to their law cases, he would have come to a different conclusion. When in 1793 we remonstrated with the American government against the fitting out of privateers in their ports, they did not say that they had no municipal law to meet the case, and were not bound by international law, but at once passed an act to meet our complaints. The act of 1794 was, for a time, sufficient for its purpose. He could not find that it was evaded by a single privateer issuing from the ports of America to prey upon British commerce during the long course of the French war. Shortly after the close of that war, however, the Spanish and Portuguese colonies in South America revolted from their parent countries. Great sympathy was felt in the United States for the independence of these colonies, and their lawyers were not long in discovering a flaw in the foreign enlistment act, just as lawyers had done in ours, which was almost identical. In evasion of the law privateers were dispatched from American ports. The course adopted was much the same as that taken by those who, in our own day, fitted out the Alabama, Georgia, and Florida. The vessels were chartered as traders, and received guns and ammunition under the disguise of cargoes of merchandise. When they got out to sea they hoisted their guns out of their holds, mounted them on deck, and displayed the flag of one of the South American republics. The American government, he was bound to say, did all they could to enforce the law against these cruisers. There were numerous cases in which they were seized and condemned, and there were also cases of prosecution for infringement of the foreign enlistment act. Those measures, however, were not sufficient to repress the evil. Spain and Portugal both remonstrated with the United States for allowing cruisers to be fitted out in their ports; and the complaints which were made bore a striking resemblance to some of those which the federal government had lately addressed to us. The Portuguese government pointed out that the fault was entirely in the insufficient state of the existing law, and urged its amendment. Similar representations were made by the Spanish minister; and even this country and France joined in the remonstrances. What was the reply of the United States? They did not say that they had a municipal law, and that no international obligation required them to go beyond it. On the contrary, the President immediately sent a message to Congress, in which, after pointing out the evasions of their law, he said:

"It is of the highest importance to our national character, and indispensable to the morality of our citizens, that all violations of our neutrality should be prevented. No door should be left open for the evasion of our laws; no opportunity afforded to any who may be disposed to take advantage of it to compromise the interest and the honor of the nation. It is submitted, therefore, to the consideration of Congress, whether it may not be advisable to revise the laws with a view to this desirable result."

He thought this message was most honorable to American statesmanship, and he should like to see her Majesty's government in the present juncture adopt the same policy as the government of the United States in 1817. In accordance with the President's message an act of Congress was proposed, containing two clauses not in the original act, and, he might observe, wanting to our statute, the one giving collectors of customs authority to detain vessels under suspicion of being intended for hostilities till inquiry should be made, the other giving the State officers power to exact bonds from vessels suspected that they would not be used hostilely against an ally of the States. There was then, it should be remembered, quite as strong a sympathy in the United States for the South American colonies as prevailed among honorable gentlemen opposite for the southern States of North America; and of course there was strong opposition to the proposed act during its progress through Congress. It was said that it had been brought forward under pressure from foreign powers, and that traders had a right to sell ships if they chose. The government replied that they had duties to perform, not to one nation, but to all, that they had listened to the representations of foreign powers only because they deemed them reasonable, and that traders must take care that in their mercantile dealings they did not do anything which was incompatible with the higher interests of the country. He did not hesitate to say that such cases as had occurred in this country could not have taken place under the law of the United States; and he held that our honor and our interest required that we should adopt the clauses which had been added to the original American act. In so doing, we should, he thought, prevent the repetition of such unfortunate cases for the future. As regards those cases which had already occurred, he thought the least we could do was to prohibit absolutely such vessels from entrance to our ports. We had precedent for such course in the conduct of the American government in 1793, who, not content with passing their foreign enlistment act at our instance, had also dismissed from their ports those vessels which had previously been fitted out in them. But there was yet an earlier precedent, arising out of the American

war of independence. Gibbon, in his well-known memoir in justification of the war with France in 1779, told us that when privateers were fitted out in French ports for the service of the American government, the British government strongly protested against it, and offered France the alternative of checking the practice or going to war. France chose peace, and undertook to dismiss all the privateers from her ports at once. Therefore, there were two precedents directly in point, showing what ought to be done in regard to these vessels. It was said that there had been no judicial investigation in connection with the southern cruisers, but that was because they escaped from this country before any trial could be instituted. He did not suppose that any one could doubt that these vessels were built in violation of our neutrality, and he hoped the government would entertain the proposals suggested by the honorable member for Huntingdon.

LORD ROBERT MONTAGUE said there could be no doubt either as to the bias of the honorable member's sympathies or the source of his inspiration. Instead of availing himself of the authentic sources of information in this country, he had evidently gone for facts to the American papers laid on the table of Congress, and for arguments to the debates in their chambers. The honorable member for Rochdale had proved conclusively that the trade of the northern States had been considerably diminished; but he had failed to show how we had been the cause of the destruction of their commerce. His speech was like a bridge without a keystone; his facts and premises were established, but his conclusion was illogical. The honorable gentleman had entirely omitted to show how we were responsible for the injury which American commerce had sustained since the war began. "Yes, I did," he says, "you admitted the vessels of the southern States into your ports, and these damaged the commerce of the northern." He (Lord Robert Montague) had thought that the southern States were not yet ripe for recognition. But the honorable member had shown that they not only had held their ground against the North, but had actually destroyed their commerce; and that, too, in the face of a navy which had come victorious out of many a battle, and prided itself upon being the strongest in the world. Not only had the southern States manufactured a navy, but they had beaten the federal ships which had long ridden the sea in triumph, so that the latter were now fain to avoid the conflict. How were we to blame for that? Should we have done anything to prevent the South from sending their ships to sea, or have refused to them that hospitality which our neutrality bound us to concede equally to both sides? The honorable member had also drawn a case, which he said was analogous, of a friend who was suspected of an act derogatory to his honor, although nothing had actually been proved against him, and had said that in such a case we should refuse to have any more dealings with our friend until he had succeeded in clearing his character. So, he said, we should act by the southern States, who were suspected of fitting out ships in this country. But the attorney general had pointed out that as yet the southern States were not recognized by us, and that, consequently, we had no legal channel for those communications which might otherwise have been addressed to them. The federal government had themselves prevented us from communicating with the South by blockading their ports, and had declined to permit a British man-of-war to proceed to one of the southern ports for that purpose. The honorable member said the Florida was a privateer, and had grounded his assertion upon the fact that she had not fought men-of-war, but preyed upon the trade of her enemy. This was a very mistaken definition of a privateer. A privateer was an armed merchant vessel, which, whenever opportunity offered, plundered enemy's property; but the Florida carried no cargo, and had actually proved her commission as a man-of-war. Neither did he think, as the honorable member seemed to believe, that if England altered her law Russia would refrain from sending privateers to sea to plunder English property in case of war with this country. For these reasons he could not concur with the otherwise eloquent speech of the honorable member for Rochdale. He (Lord Robert Montague) did not attribute the decline of trade and the rise in freighting in America to any illegal action or violation of neutrality on our part; it was the inevitable result of a war which diverted the energy of capital in other directions, and absorbed a great deal of the capital which would otherwise be employed in promoting commerce.

MR. ALDERMAN ROSE said, he believed the country would indorse the definition of the law of neutrality as laid down by the attorney general, and carried out by the administration. He denied that the opinions of the honorable members for Rochdale and Bradford were shared by the people at large. The honorable member for Rochdale had given the House a list of the losses which had occurred to the United States Navy, but he had not alluded to the other losses of that country—its loss of liberty, of credit, of everything which a country should hold dear. The South had, no doubt, the blot of slavery to contend against; but had the North had nothing to do with that? He contended that all the evils of the slave trade were owing to the mode in which the federal States had formerly dealt with it. The whole system of government in the northern States was false, rotten, and corrupt, while the South was making for themselves a great name and a glorious history. He believed the day was not distant when the confederacy would be an independent nation, recognized by the nations of Europe.

Motion agreed to.

APPENDIX No. XXII.

PROCEEDINGS OF THE LEGISLATIVE COUNCIL AT MELBOURNE RELATIVE TO THE SEIZURE OF THE SHENANDOAH.*

[From the Melbourne Herald of February 23, 1863.]

LEGISLATIVE COUNCIL.

WEDNESDAY, February 22.

THE SEIZURE OF THE SHENANDOAH.—MR. HIGGETT'S MOTION.

MR. HIGGETT, pursuant to notice, moved that an address be presented to the governor, praying that his excellency would cause to be laid on the table of the house copies of any instructions received from the home government relative to the reception and treatment of ships of war of foreign nations visiting this port, more especially in relation to those of belligerent powers. He said that the correspondence which had recently taken place between the government and the commander of the Shenandoah had caused great excitement in the public mind. The majority of the public were of opinion that it should have taken place between the governor and the commander of that vessel. His motion would set that at rest.

MR. HULL seconded the motion.

MR. HERVEY said that, beyond what had been published, any dispatches were confidential, and his excellency would not, therefore, give them up. Under the circumstances, he hoped the honorable member would withdraw his motion.

MR. COLE supported the motion.

MR. HULL referred to the imbroglio that took place between Lieutenant Lowe, of the confederate tender to the Alabama, in Temple Bay, and the governor at that port, and stated that the correspondence was carried on entirely between Lieutenant Lowe, although he was only a lieutenant and commanding a tender, and the governor.

MR. HIGGETT intimated that he would call for a division.

MR. HERVEY pointed out that there were certain dispatches which the governor was not entitled to lay before the house, and that in the present case they were of that nature. The governor had acted in accordance with those instructions.

MR. HIGGETT said that his motion was merely for the presentation of an address to the governor, and it should be left to the governor to say whether he would comply with it. His own impression was that the instructions were to correspond through the ministry, but he wanted to see that it was so.

MR. STRACHAN thought that any instructions sent ought to be laid before Parliament. It seemed very extraordinary that in an important matter, when the correspondence had been carried on by the government and not by the governor, that it could be withheld. The government had not, in his opinion, come out with very flying colors in the matter. His opinion was that the governor should have carried on the correspondence.

MR. FRASER opposed the views of the last speaker, and thought the house ought not to press the matter. The governor, through the commissioner of customs, had shown to the public at large what the instructions were, as would be seen from the correspondence. The government had acted under instructions from the governor. MR. FAWKNER: "Who knows that?" If the dispatch was a private one they should not insist upon having it.

MR. FAWKNER hoped that the honorable member would press it to a division. If the honorable member who had just sat down had seen all the correspondence and read it, he (MR. FAWKNER) had not.

MR. FRASER said that he had read it in the public prints.

MR. FAWKNER said that a one-sided view was always taken by the public prints. He

* Forming an appendix to dispatch No. 4, from Mr. Blanchard to Mr. Seward, February 23, 1863, (see vol. III, p. 384.) which is printed as inclosure B to dispatch No. 1074, from Mr. Adams to Mr. Seward, October 27, 1863, (see vol. III, p. 373.)

characterized the conduct of the government in seizing the ship while on the slip as cowardly and most unmanly. It was, moreover, a ship of war. It was like the case of the Florida. He maintained that the vessel was seized without rhyme or reason. It was quite possible that a few men were stowed away without the knowledge of the commander, and it had not been proved that the men had been employed, although they were charged with having enlisted. The government had compromised itself with the people at large.

Mr. FELLOWS pointed out the double capacity of the governor as a constitutional sovereign and an agent of the home government, and remarked upon the course taken by Sir Henry Barkly in laying upon the table certain papers, with the understanding that it was not conceded as a right or to be considered as a precedent. If to the motion the government returned the answer that it was inconvenient, as the papers were private and confidential, there was an end of the matter; but, referring to the correspondence, he thought a different construction was to be put upon it. He then quoted from the published correspondence to show that, as reference was not made expressly to the governor, the government were understood to be authorized by the imperial government, and that, therefore, the instructions could be called for.

Mr. HERVEY reminded the house that it was more an imperial than a colonial question. The governor owed a duty to the home government, and if he had done anything wrong, it was his particular duty to justify his action to that government. He only wished the government could produce the letters, as they were not desirous of keeping them back. The matter would come before Parliament at home, and the justification would have to be made in the proper quarter.

Mr. FELLOWS suggested that the honorable member might say that it did not contain any instructions to the local government.

The question was then put, and agreed to, on a division by 15 to 10.

MR. COLE'S MOTION.

Mr. COLE moved that copies be furnished of all correspondence between the government and the commander of the Shenandoah. He remarked that it was an important question, involving the neutrality of the port.

Mr. S. G. HENTY seconded the motion.

Mr. HERVEY said there was no correspondence between the government and the captain of the Shenandoah. The correspondence was on behalf of the governor, and written under his direction.

After some remarks from Mr. Hull,

Mr. HIGGETT said: Do I understand that there has been no correspondence between the government and the Shenandoah?

Mr. HERVEY. None.

Mr. HIGGETT said there appeared to be, and urged that the house was entitled to that which had taken place between the commissioner of trade and customs and the commander of the Shenandoah.

Mr. MITCHELL asked whether the commissioner of customs held two positions—that of a minister and secretary to the governor?

Mr. HERVEY said the governor selected the proper officer to sign the correspondence.

Mr. FELLOWS. Who, his private secretary?

Mr. HERVEY. No; any correspondence was by the order of his excellency.

Mr. MITCHELL. Then it did not take place between any member of the government and the captain of the Shenandoah, but between the secretary of the governor and the captain of the Shenandoah.

Mr. STRACHAN. Did the governor indorse all the commissioner of customs wrote?

Mr. HERVEY. Yes.

Mr. STRACHAN. Then let us have it shown to be so.

Mr. FELLOWS. Under his hand and seal?

Mr. STRACHAN believed there were two letters, and would like to know whether the government indorsed all that was written by Mr. Francis. He did not and could not believe it, and it would be only when it was produced to the house, indorsed by his excellency, that he would believe it.

[From the Argus of February 18, 1865.]

I.

C. S. STEAMER OF WAR SHENANDOAH,
Port Phillip, January 25, 1865.

SIR: I have the honor to announce to your excellency the arrival of the Confederate States steamer Shenandoah, under my command, in Port Phillip, this afternoon, and

also to communicate that the steamer's machinery requires repairs, and that I am in want of coals.

I desire your excellency to grant permission that I may make the necessary repairs and obtain the supply of coals to enable me to get to sea as quickly as possible.

I desire also your excellency's permission to land my prisoners. I shall observe the neutrality.

I have the honor to be, your obedient servant,

JAMES J. WADDELL,
Lieutenant Commanding.

His Excellency Sir CHARLES DARLING, K. C. B., &c.

II.

DEPARTMENT OF TRADE AND CUSTOMS,
Melbourne, January 26, 1865.

SIR: I am directed by his excellency Sir Charles Darling to acknowledge the receipt of your letter of the 25th instant, acquainting his excellency with the arrival of the Confederate States steamer Shenandoah, under your command, at Port Phillip, and intimating that the machinery of the steamer requires repairs, and that you are in want of coals.

In the communication under acknowledgment you request his excellency to grant permission to make the necessary repairs, and to obtain a supply of coals, and, further, to be allowed to land your prisoners.

In reply, I have received the instructions of Sir Charles Darling (*sic.*) to state that he is willing to allow the necessary repairs to the Shenandoah and the coaling of the vessel to be at once proceeded with, and that the necessary directions have been given accordingly.

I am at the same time to furnish for your information the accompanying extracts of orders, issued by her Majesty's government, and publicly notified in the government Gazette of this colony on the 17th March and 24th April, 1862, with respect to armed vessels, whether belonging to the United or Confederate States of America, with which it is requisite for you to comply.

In conformity with the terms of the foregoing commands, I am to request that you will be good enough at your earliest convenience to intimate to me, for the information of his excellency, the nature and extent of your requirements as regards repairs and supplies, in order that Sir Charles Darling (*sic.*) may be enabled to judge of the time which it may be necessary for the vessel under your command to remain in this port.

With reference to your request regarding certain prisoners, his excellency desires to be furnished with a list of the prisoners in question, and any other information affecting them which you may be able to afford.

I have the honor to be, sir, your obedient servant,

JAMES G. FRANCIS,
Commissioner of Trade and Customs.

The LIEUT. COM'G C. S. STEAMER OF WAR SHENANDOAH,
Hobson's Bay.

The following are the extracts indicated and inclosed:

"You are aware of the determination of her Majesty's government to maintain the strictest neutrality in the hostilities which are now being carried on between the United and Confederate States of North America. In order to cause that neutrality to be effectually respected throughout the Queen's dominions, her Majesty has directed (in accordance with a long-established European practice) that no ship of war, privateer, or other armed vessel, belonging to either of the belligerents, which shall anchor in any British port, shall be allowed to quit her anchorage within twenty-four hours after any vessel belonging to the adverse belligerents, whether armed or unarmed, shall have left the same port.

"In order to give effect to her Majesty's orders, I am to desire that, on the arrival of any such armed vessel in any port or roadstead within your government, you will notify this rule to her commander, and will inform him that, in case he should infringe it, his government will be held responsible by that of Great Britain for violating the neutrality of the British waters."

III.

C. S. STEAMER SHENANDOAH, *January 28, 1865.*

SIR: Upon the receipt of your communication of the 26th instant, in which permission was granted for the repairs necessary to the Shenandoah to be proceeded with, I sent for and engaged the services of Messrs. Langlands Brothers & Co., to examine the propeller and bracings under water, and to undertake the repairs, which was agreed to by the firm, informing them of the importance of haste, and importance to me their

report would be, as his excellency desired to know the extent of injury done to the vessel. I was promised a report, and have been asking each day for it, but none has been handed in yet, and as I conceived an idea that their report would be more satisfactory than any I could write for his excellency's information, I have delayed, in accordance with the grace given me at my "earliest convenience," to intimate to you the extent of damages. Every arrangement has been made for lifting the propeller clear of the ship, and a diver has examined the bracings under water to-day. From what I have seen of the propeller shaft, and the verbal report of the diver on the bracings under water, I can state that the composition castings of the propeller shaft are entirely gone, and the bracings under water in the same condition. So soon as Messrs. Langlands Brothers & Co. hand in their report, I shall inclose it to his excellency. The other repairs are progressing rapidly. I fear the damages will prove more serious than I anticipated them to be at first.

I have the honor to be, very respectfully, your obedient servant,

JAMES J. WADDELL,

Lieutenant Commanding C. S. N.

The Hon. COMMISSIONER of Trade and Customs.

IV.

CUSTOM-HOUSE, Melbourne, January 30, 1865.

SIR: I am directed by his excellency the governor to acknowledge the receipt of your letter of the 28th instant, and of your memorandum of this day's date, indorsed on a letter addressed to you by Messrs. Langlands Brothers Co., a copy of which letter, with your subjoined memorandum, is returned herewith, and to inform you it will be necessary that a list of the supplies required for the immediate use of your vessel, together with one of the prisoners, &c., as I suggested in my previous communication, should be sent in for the guidance of his excellency, before four p. m. on the 31st instant.

I have it further in command to inform you that his excellency has appointed a board, consisting of Mr. Payne, inspector and secretary of the Steam Navigation Board; Mr. Elder, superintendent of the marine yard at this place, and Mr. Wilson, the government marine engineer, to go on board the Shenandoah and to examine and report whether that vessel is now in a fit state to proceed to sea, or what repairs are necessary.

I have the honor to be, sir, your obedient servant,

JAMES G. FRANCIS.

J. J. WADDELL, Esq.,

Lieutenant Commanding Confederate States Steamer Shenandoah.

V.

PORT PHILIP FOUNDRY, Melbourne, January 30, 1865.

SIR: At your request we beg to report that it will be absolutely necessary to put the Shenandoah on the government slip, as, after inspection by the diver, he reports that the lining of outer stern back is entirely gone, and will have to be replaced.

As to the time required (as three days will elapse before she is slipped) we will not be able to accomplish the repairs within ten days from date.

Yours, &c.,

LANGLANDS BROS. & CO.

Captain WADDELL,

Confederate War Steamer Shenandoah.

Indorsement: Respectfully submitted to the honorable commissioner of trade and customs, with the request that it may be returned.

JAMES WADDELL,

Lieutenant Commanding.

JANUARY 30, 1865.

VI.

DEPARTMENT OF TRADE AND CUSTOMS,
Melbourne, January 31, 1865.

SIR: By direction of his excellency the governor, I have the honor to acknowledge the receipt, this morning, of your letter of yesterday's date, stating the supplies required for the officers and crew of the vessel under your command, and informing me that the prisoners alluded to in your previous communication have left the Shenandoah without your knowledge, in shore boats, soon after your arrival.

I am desired by Sir Charles Darling (sic) to state that permission is conceded for you

to ship on board the Shenandoah, in such quantities as may be reasonably necessary, the provisions and supplies enumerated in your communication under reply. I would therefore request that your purser, authorized in that behalf, will communicate with the collector of customs as to quantities and detailed particulars.

I am again to renew my request to be furnished with a list giving the number of and particulars (as far as possible) with respect to the prisoners who were brought to this port in the Shenandoah; and I may add that the number in this instance is understood to be small, yet action in this case may form a precedent for future guidance should such a question again arise, with, perhaps, a larger number of persons whom it may be desired to land in violation of municipal or other laws or regulations in force in this colony.

I have the honor to be, sir, your obedient servant,

JAMES G. FRANCIS,
Commissioner of Trade and Customs.

J. J. WADDELL, Esq.,
Lieut. Commanding Confederate States Steamer Shenandoah.

VII.

CONFEDERATE STEAMER SHENANDOAH, HOBSON'S BAY,
February 1, 1865.

SIR: I have the honor to acknowledge the receipt of your communication of yesterday's date, and, in reply to that portion which has reference to supplies, &c., directions have been given the paymaster of the Shenandoah in accordance with your views.

I cheerfully furnish a list of those persons who were my prisoners on "the high seas," at your request, for future guidance, and at the same time, inform you that a list was furnished Mr. McFarlane, chief officer of her Majesty's customs for Williamstown, as far back as the 25th or 26th ultimo, in official form. "Particulars" connected with the prisoners brought into Port Philip are the following: They were captured serving in the American bark Delphine, which vessel I destroyed, and after reaching this port left this vessel of their own free will, without consulting the "regulations in force in this colony," unmolested, unassisted, and not in any boat belonging to this vessel.

I am extremely anxious to get the Shenandoah to sea. The procrastination by the parties employed under his excellency the governor's permission for the necessary repairs to this ship seems to me unnecessary; and if I appeal to his excellency the governor for further instructions to those employed to hurry up the work on this ship, I hope his excellency, the governor, will see in it the spirit of a law-abiding man, and one impatient to be about his country's business.

Yesterday the commission of officers appointed by his excellency the governor for the examination of this vessel came on board; but I was absent from the ship, not having been informed by the honorable commissioner of trade and customs of the day set apart for that visit.

I have the honor to be, sir, respectfully, &c.,

JAS. J. WADDELL,
Lieutenant Commanding, C. S. Navy.

The Hon. COMMISSIONER of Trade and Customs.

VIII.

DEPARTMENT OF TRADE AND CUSTOMS,
Melbourne, February 1, 1865.

SIR: I am directed by his excellency the governor to acquaint you that he has received a progress report from the board appointed to examine the Shenandoah, and report whether that vessel is in a fit state to proceed to sea, or what repairs are necessary. From the tenor of this communication, it is evidently necessary that your ship should be placed on the patent slip for further examination and repairs, and I presume you will therefore proceed promptly with the necessary arrangements. For your information, I may state that the slip, termed the government patent slip in the communication to yourself from Messrs. Langlands Brothers & Co., is not in possession of or under the control of the authorities. It was originally built by this government, but for many years has been leased to various parties, and your arrangements must therefore be made with the present lessees.

By inadvertence you have omitted to enclose the list of prisoners to which you make reference in your communication of this date.

I have the honor to be, sir, your obedient servant,

JAS. G. FRANCIS,
Commissioner of Trade and Customs.

J. J. WADDELL, Esq.,
Lieut. Commanding C. S. Steamer Shenandoah.

IX.

CONFEDERATE STATES STEAMER SHENANDOAH,

February 1, 1865.

SIR: I have the honor to acknowledge receipt of your communication of this day's date, informing me of the character of the report made to his excellency the governor by the board of examiners; also, calling my attention to another list of prisoners, which you desire. I cheerfully furnish this the second list; and have the honor to be, sir, respectfully, &c.,

JAMES J. WADDELL,

Lieutenant Commanding, C. S. Navy.

The Hon. COMMISSIONER of Trade and Customs.

X.

DEPARTMENT OF TRADE AND CUSTOMS,

Melbourne, February 7, 1865.

SIR: I am instructed by his excellency Sir Charles Darling to acquaint you that, as the ship under your command, the Shenandoah, has already been twelve days in our port, with permission to lay in provisions, or things necessary for the subsistence of her crew, and to effect the necessary repairs, it is desired by his excellency that you should now name the day upon which you will be prepared to proceed to sea; and I am further directed to inform you that after carefully considering the question of the position of Great Britain, as strictly neutral in the present contest, the use of appliances the property of this government cannot be granted, nor any assistance rendered by it directly or indirectly, towards effecting the repairs of the Shenandoah.

I have the honor to be, sir, your most obedient servant,

JAS. G. FRANCIS,

Commissioner of Trade and Customs.

J. J. WADDELL, Esq.,

Lieut. Com'd C. S. Steamer Shenandoah, Hobson's Bay.

XI.

CONFEDERATE STATES STEAMER SHENANDOAH,

February 7, 1865.

SIR: I have the honor to acknowledge receipt of your communication of this day's date, and, in reply, for information desired for his excellency the governor, I have to write that I cannot name a day for proceeding to sea with this ship until she is taken on the slip, where the injury can be perfectly ascertained and the time estimated for its repair. The recent gales have prevented me from lightening the ship to the necessary draught preparatory to going on the slip, in which matter I have been guided by those who are in charge of the slip. I hope the weather will permit the engineer to take the Shenandoah on the slip to-morrow morning.

I am, sir, respectfully yours,

JAMES J. WADDELL,

Lieutenant Commanding, C. S. Navy.

The Hon. COMMISSIONER of Trade and Customs.

XII.

DEPARTMENT OF TRADE AND CUSTOMS,

Melbourne, February 14, 1865.

SIR: Referring to my communication of the 7th instant, I am again directed by his excellency Sir Charles Darling to inquire whether you are now in a position to state more definitely when the Shenandoah will be in a position to proceed to sea; and if so, I shall be obliged by your informing me accordingly.

I have the honor to be, sir, your obedient servant,

JAMES G. FRANCIS,

Commissioner of Trade and Customs.

J. J. WADDELL, Esq.,

Lieut. Commanding C. S. Str. Shenandoah, Hobson's Bay.

XIII.

C. S. STEAMER SHENANDOAH, *February 14, 1865.*

SIR: I have the honor to acknowledge receipt of your communication of this day's date, and, in reply, have the pleasure to inform you, for his excellency the governor's

information, that the superintendent of the ship and Messrs. Langlands Brothers & Co. inform me that the Shenandoah will be ready for launching to-morrow morning, the 15th instant, at four o'clock a. m.; and I think, without some unforeseen accident, I shall proceed to sea in her by Sunday, the 19th instant. I have yet to take in all my stores, coals, and swing the ship.

I have the honor to be, very respectfully, yours, &c.,

JAMES J. WADDELL,
Lieutenant Commanding, C. S. Navy.

The Hon. COMMISSIONER of Trade and Customs.

XIV.

CUSTOM-HOUSE, MELBOURNE, *February 14, 1865.*

SIR: I am directed by his excellency the governor to state that it has been reported to the government that you have refused to allow the execution on board the Shenandoah of a warrant issued upon sworn information, according to law, alleging that a British subject is on board that vessel who has entered the service of the Confederate States, in violation of the British statute known as the "foreign enlistment act;" that it is not consistent with the British law to accept any contrary declaration of facts, whatever respect be due to the person from whom it proceeds, as sufficient to justify the non-execution of such warrant; and that, moreover, it is conceived that this government has a right to expect that those who are receiving in our port the aid and assistance which they claim as a belligerent under the Queen's proclamation, should not in any way oppose proceedings intended to enforce the maintenance of neutrality.

It will be apparent to you that the execution of the warrant is necessary, in order to enable the government to bring to justice those upon whose depositions the warrant was issued, if the statements in those depositions should prove false in fact.

In this view, you are appealed to to reconsider your determination; and pending further intimation from you, which you are requested to make with as little delay as possible, the permission granted you to repair and take supplies is suspended, and her Majesty's subjects have been duly warned accordingly.

I have the honor to be, sir, your obedient servant,

JAMES G. FRANCIS.

J. J. WADDELL, Esq.,
Lieut. Commanding C. S. Str. Shenandoah.

XV.

C. S. STEAMER SHENANDOAH, *February 14, 1865.*

SIR: I am in the receipt of your letter of this date, in which you inform me that you have been directed by his excellency the governor to state, "that it has been reported to the government that I have refused to allow the execution on board the Shenandoah of a warrant issued upon sworn information, according to law, alleging that a British subject is on board this vessel who has entered the service of the Confederate States, in violation of the British statute known as the foreign enlistment act, and that it is not consistent with the British law to accept any contrary relation of facts, whatever respect be due to the person from whom it proceeds, as sufficient to justify the non-execution of such warrant." I am then appealed to "to reconsider my determination," and the letter concludes by informing me that, "pending a further intimation from me," the permission granted to repair and take supplies is suspended.

I have to inform his excellency the governor that the execution of the warrant was not refused, as no such person as the one therein specified was on board, but permission to "search" this ship was refused. According to all the laws of nations, the deck of a vessel of war is considered to represent the majesty of the country whose flag she flies, and she is free from all executions, except for crimes actually committed on shore, when a demand must be made for the delivery of such person, and the execution of the warrant performed by the police of the ship. Our shipping articles have been shown to the superintendent of police. All strangers have been sent out of the ship, and two commissioned officers were ordered to search if any such have been left on board. They have reported to me that, after making a thorough search, they can find no person on board except those who entered this port as part of the complement of men.

I therefore, as commander of the ship representing my government in British waters, have to inform his excellency that there are no persons on board this ship except those whose names are on my shipping articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port; nor have I in any way violated the neutrality of the port.

And I, in the name of the government of the Confederate States of America, hereby

enter my solemn protest against any obstruction which may cause the detention of this ship in this port.

I have the honor to be, sir, your obedient servant,

JAMES J. WADDELL,
Lieutenant Commanding, C. S. Navy.

The Honorable JAMES G. FRANCIS,
Commissioner of Trade and Customs, Melbourne.

Telegram from Mr. F. C. Standish, chief commissioner of Victorian police, to Mr. Beaver, police inspector, stationed at Williamstown :

[Telegram for Mr. Beaver.]

I have to direct that you communicate with Mr. Chambers, the lessee of the patent slip, that the governor in council has given directions that he and all other British subjects in this colony at once desist from rendering any aid, assistance, or perform any work, in respect to the aforesaid confederate ship Shenandoah, or in launching same. You will at once proceed with the whole of the police at your disposal to the patent slip, and prevent, at all risks, the launch of the said ship. Superintendent Lyttleton and fifty men, also fifty of the military, proceed at once to Williamstown, telegraphing anything that may occur direct to me.

F. C. STANDISH.

TUESDAY 14, 1865.

XVI.

C. S. STEAMER SHENANDOAH, *February 15, 1865.*

SIR: I am informed by the manager of the slip upon which the Confederate States steamer Shenandoah now rests, that the slip has been seized by authority from his excellency the governor, to prevent the launching of the Confederate States steamer Shenandoah, which of necessity is a seizure of the vessel under my command. I therefore respectfully beg to be informed if this seizure is known to his excellency the governor, and if it meets his approval.

Very respectfully, &c.,

JAMES J. WADDELL,
Lieutenant Commanding, C. S. Navy.

The Hon. COMMISSIONER of Trade and Customs.

XVII.

CUSTOM-HOUSE, MELBOURNE, *February 15, 1865.*

SIR: In acknowledging your letters of yesterday's date, and also in reply to your communication of this morning, I am instructed by his excellency the governor to inform you that the lessee of the patent slip having reported that the safety of the ship Shenandoah may be endangered by her present position on the slip, the suspension of permission to British subjects to assist in launching the ship is withdrawn; while the further matters referred to in your letters are under consideration, and will be replied to with as little delay as possible.

I have the honor to be, sir, your obedient servant,

JAMES G. FRANCIS.

J. J. WADDELL, Esq.,
Lieut. Commanding C. S. Str. Shenandoah.

XVIII.

CUSTOM-HOUSE, MELBOURNE, *February 15, 1865.*

SIR: I am directed by his excellency the governor to further acknowledge your communications of the 14th and 15th instant, in which, alleging that the vessel under your command had been seized, you ask whether the seizure is known to his excellency the governor, and if it meets his approval.

I am to inform you, in reply, that this government has not directed or authorized the seizure of the Shenandoah.

The instructions to the police were to see that none of her Majesty's subjects in this colony rendered any aid or assistance to, or performed any work in respect of, your vessel during the period of the suspension of the permission which was granted to you to repair and take in supplies, pending your reply to my letter of yesterday's date, in regard to a British subject being on board your vessel, and having entered the service of the Confederate States, in violation of the British statute known as the

foreign enlistment act, and of the instructions issued by the governor for the maintenance of neutrality by her Majesty's subjects.

In addition to evidence previously in possession of this government, it has been reported by the police that about ten o'clock last night four men, who had been in concealment on board the *Shenandoah*, left the ship, and were arrested immediately after so leaving by the water police.

It appears from the statements of the men that they were on board your vessel both on Monday and Tuesday, the 13th and 14th instants, when their presence was denied by the commanding officer in charge, and by yourself subsequently, when you declared that there were "no persons on board this ship except those whose names are on our shipping articles." This assertion must necessarily have been made by you without having ascertained for yourself by a search that such men were not on board, while at the time you refused permission to the officer charged with the execution of the warrant to carry it into effect.

Referring to that portion of your communication of the 14th instant, in which you inform his excellency the governor "that the execution of the warrant was not refused, as no such person as the one therein specified was on board," I am in a position to state that one of the four men previously alluded to is ascertained to be the person named in the warrant.

I am also to observe that, while at the moment of the dispatch of your letter it may be true that these men were not on board the *Shenandoah*, it is beyond question that they were on board at the time it was indited, your letter having been dispatched at five minutes before ten o'clock.

It thus appears plain, as a matter of fact, that the foreign enlistment act was in course of being evaded.

Nevertheless, as the only person for whose arrest a warrant was issued has been secured, and as you are now in a position to say, as commanding officer of the ship, and on behalf of your government, whose faith is pledged by the assurance "that there are no persons on board this ship except those whose names are on our shipping articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port," his excellency the governor has been pleased to revoke the directions issued yesterday, suspending permission to British subjects to aid and assist you in effecting the necessary repairs and taking in supplies.

I am to add, it is expected you will exercise every dispatch, so as to insure your departure by the day named in your first letter of yesterday, viz, Sunday next.

I have the honor to be, sir, your obedient servant,

JAMES G. FRANCIS.

J. J. WADDELL, Esq.,

Lieut. Commanding C. S. Steamer Shenandoah.

XIX.

C. S. STEAMER SHENANDOAH,
Hobson's Bay, February 16, 1865.

SIR: I am in receipt of your communication of yesterday's date, and desire to convey through you to his excellency the governor my appreciation and thanks for his observance of the rights of belligerents, and further to assure his excellency the governor that every dispatch is being made by me to get the *Shenandoah* to sea at the earliest possible moment.

The four men alluded to in your communication are no part of this vessel's complement of men; they were detected on board by the ship's police after all strangers were reported out of the vessel, and they were ordered and seen out of the vessel by the ship's police immediately on their discovery, which was after my letter had been dispatched informing his excellency the governor that there were no such persons on board. These men were here without my knowledge, and I have no doubt can be very properly called stowaways; and such they would have remained but for the vigilance of the ship's police, inasmuch as they were detected after the third search; but in no way can I be accused, in truth, of being cognizant of an evasion of the foreign enlistment act.

In conclusion, sir, allow me to inform you that I consider the tone of your letter remarkably disrespectful and insulting to the government I have the honor to represent, and that I shall take an early opportunity of forwarding it to the Richmond government.

Very respectfully, &c.,

JAMES J. WADDELL,

Lieutenant Commanding, C. S. Navy.

The Hon. the COMMISSIONER of Trade and Customs.

This closes the correspondence between Captain Waddell and the government. But the following letter was dispatched to Mr. Higinbotham:

XX.

C. S. STEAMER SHENANDOAH,
Hobson's Bay, February 14, 1865.

SIR: Be pleased to inform me if the Crown claims the sea to be British waters three miles from the Port Phillip Head lights, or from a straight line drawn from Port Lonsdale and Cape Schank.

I have the honor to be, very respectfully, &c.,

JAMES J. WADDELL,
Lieutenant Commanding, C. S. Navy.

The Honorable the ATTORNEY GENERAL.

Captain Waddell states that a reply written and signed by a clerk was brought to him by a messenger, of whom he knew nothing till a gentleman on board explained who he was. The document simply stated that no reasons for the communication of the information had been given. Captain Waddell handed the "reply" back to the messenger with the simple answer that it was not what he wanted, and that it had better be taken back, with his compliments.

[From the Age of February 16, 1865.]

In the legislative council yesterday, the president being absent through illness, Dr. Wilkie, the chairman of committees, took the chair at a quarter past four o'clock.

Mr. FELLOWS asked the commissioner of public works, without notice, what steps had been taken by the government with reference to an attempt to execute a magistrate's warrant on board the Shenandoah. Mr. Hervey explained that a warrant had been granted upon information of certain persons having been shipped on board the Shenandoah contrary to the laws of neutrality, and that a police officer had been dispatched with the warrant to search the ship. He was denied permission to execute the warrant, and the government determined to suspend the privileges which had been granted to the commander of the Shenandoah on his entering the port. Four persons who had been shipped in contravention of the neutrality laws had been captured by the police in attempting to escape, and were now in custody. The commander of the Shenandoah having stated, upon his honor as an officer and a gentleman, that the ship having been cleared of strangers, there was now no person on board who was not there when the ship entered the port, the government had granted a resumption of the privileges they had suspended upon leave being refused to search the ship. On the motion of Mr. Fraser, twelve months' leave of absence from the 1st of March was granted to the honorable T. T. A'Beckett. The land act amendment bill was further considered in committee, Mr. James Henty acting as chairman. The bill was reported to the house, and the adoption of the report made an order of the day for Tuesday next. The house adjourned at seven minutes past five o'clock until Tuesday, the 21st instant.

PARLIAMENT OF VICTORIA,
Legislative Council, Wednesday, February 15.

The clerk announced at a quarter past four o'clock that he had received a note from the president to the effect that he was prevented by illness from attending the sittings of the council that afternoon.

Dr. Wilkie, the chairman of committees, accordingly took the president's chair and read the usual form of prayer.

THE SEIZURE OF THE SHENANDOAH.

Mr. FELLOWS rose to ask the commissioner of public works, without notice, whether the government had received any information with reference to an attempt to execute a magistrate's warrant on board the Shenandoah, now on the patent slip at Williamstown, and if so, what steps they had taken in the matter. He apprehended, as far as the law of the matter went, that if any foreign merchant vessel visited these ports she owed a temporary allegiance to the laws of this country, and was subject, of course, to the jurisdiction of the colonial courts. An implied consent was given to a ship of war or armed vessel belonging to another country to enter these ports; and there was also an implied consent on the part of the power giving permission to enter the port, that a vessel of that character should not be subject to any jurisdiction of the courts of that power. This being the case, he wished to know what action the government had taken in the

matter. He might remind the honorable member, with reference to the protection foreign vessels were entitled to claim, that it had been decided in the court of admiralty that a merchant vessel leaving a country and returning under commission from a foreign power, and being brought before the court by her former owners, the latter were not in a position to recover because the ship was owned by a foreign power.

Mr. HERVEY wished to know if he was desired to answer the whole question at once without notice.

Mr. FELLOWS. Merely whether the government have taken any steps to execute the warrant.

Mr. HERVEY then stated that the government had received notification of an information having been laid before the police bench at Williamstown, to the effect that a certain individual had been shipped on board the Shenandoah contrary to the neutrality laws of this country in regard to the Confederate and Federal States of America. The commander of the Shenandoah, on entering these waters, had sought the protection of the colonial government; and certain facilities for repairs and obtaining supplies, such as a neutral power was justified in giving, had been granted at his request. He was informed that it was the intention of the government to observe strict neutrality, and he gave that pledge which would be expected from any person in his position, that he would strictly observe the laws of neutrality. Complaints, however, were made of a number of British seamen having joined the ship since she entered these waters, and proceedings were taken upon several depositions which had been made with regard to British subjects being on board the vessel. An officer of the police was sent, with a warrant, on Monday, to arrest a man sworn to be in the ship. The commander of the vessel was not on board at the time, and the chief officer declined to permit the warrant to be executed until the captain returned. On Tuesday the same officer of police was dispatched with a warrant, and the captain refused to allow it to be enforced. In all similar cases, when a warrant was sent on board a foreign vessel, it was usual for the authority to be recognized, and if the officer of police, in whose possession it was, was not asked to exercise it, it was executed by the police of the vessel, there being ship police on every vessel of war. In this case there was a positive refusal to permit the warrant to be executed at all. Numerous affidavits having been made that many persons had been induced to ship on board the Shenandoah, the government determined to suspend the privileges granted to the commander on condition of his observing the neutral laws, and in order that this direction should be properly carried out without violence, a body of police was sent down to Williamstown to see that none of her Majesty's subjects infringed the order which had been issued on the subject. A communication was sent to the commander, explaining to him the circumstances under which the privileges previously granted him had been suspended. The police, under instructions to carry out the order, remained near the vessel all night, and about ten o'clock they observed several persons attempting to escape from the Shenandoah by means of a swift waterman's boat. The water police pursued and captured the boat, which contained four persons, who proved in each instance to be men who had joined the Shenandoah since her arrival in these waters. Three were British subjects and one was not, but still it was necessary that the fourth individual should have obtained permission before shipping. A letter the captain of the Shenandoah wrote, in answer to the communication of the government, distinctly stated that when the officer of police visited his ship he had no individual on board who was not there when the vessel entered Victorian waters, but it was now known that several men who had shipped in Hobson's Bay had escaped, in addition to the four who were captured. The captain of the Shenandoah then wrote to say that, having cleared the ship of strangers, he was enabled to say, on his honor as an officer and a gentleman, that there was no person on board (as he had ascertained by the inspection of two commissioned officers appointed for the purpose) who was not there when the vessel came into port. Upon this statement, made on the strength of the ship having been cleared of strangers, the government had to-day authorized the resumption of the privileges formerly granted to the commander of the Shenandoah, reserving to itself, however, the decision upon certain points, which would all be made public when the measures which would be passed on the subject were brought forward.

Mr. HULL asked if the violation of the laws of neutrality would be followed up by any further proceedings.

Mr. HERVEY replied that the men in custody were to be brought before the Williamstown bench on the following morning.

Mr. FELLOWS. Under what authority was the permission for carrying out repairs suspended?

Mr. HARVEY. Upon the authority of the representative of her Majesty, of course.

Mr. McCULLOCH, in reply to a question by Mr. O'Shanassy, made a lengthened statement, which will be found in another column, as to the steps that had been taken by the government with respect to the Shenandoah.

In reply to Mr. O'Shanassy, Mr. McCulloch stated that it would be unadvisable to lay

on the table of the house the correspondence between the government and the commander of the confederate war ship Shenandoah at the present time. He, however, explained the action taken by the government relative to the breach of the foreign enlistment act said to have been committed.

LEGISLATIVE ASSEMBLY.

WEDNESDAY, February 1, 1865.

The Speaker took the chair at half-past four o'clock.

THE CONFEDERATE SHIP SHENANDOAH.

Mr. BERRY called the attention of the honorable the chief secretary to the infringement of the neutrality proclamation by a vessel styled the Shenandoah, now in Hobson's Bay; and asked whether the government intended to take steps to confiscate the vessel, and to punish the officers for a misdemeanor, in accordance with the provisions of the said proclamation. He thought that it could not be denied that unmistakable evidence existed that this vessel was the Sea King, which cleared out from London for Bombay with a cargo of coals. In a Manchester paper of the 19th November, there was an article alluding to the Shenandoah as the Sea King, and containing a statement from the persons who went out in her. He had also seen a deposition made by one of the prisoners since the arrival of the vessel in the bay, from which it appeared that there was no mistake as to the former name of the vessel. Under the Queen's proclamation, if this vessel had returned to an English port after destroying vessels at sea without touching at any confederate port, she would have been seized, and he saw no difference because this country was a little further off. There was abundance of evidence forthcoming for the facts to be placed prominently and unmistakably before the government.

Mr. McCULLOCH, in reply to the honorable member, stated that the question mooted was a most important one, and must be dealt with in a most cautious manner. A statement had been made that the vessel was the Sea King, but there was no proof of that beyond a mere newspaper report which had been quoted by the honorable member. No proof had been brought forward by the honorable member at all, and even if such had been the case it was questionable whether the government could deal with the ship as a pirate. [Hear, hear.] The government had given great attention to this question, and in addition to having the proclamation before them they were also in receipt of confidential dispatches from the home government, in which a case of a similar description was mentioned. The government having this information before them, and having well weighed the matter, would not feel justified in treating this vessel as a pirate. [Hear, hear.] While the terms of the neutrality proclamation would be strictly adhered to, the vessel would be allowed to take in provisions for the proper maintenance of the crew, and effect the necessary repairs. But the government could not do anything further in the matter. [Hear, hear.]

Mr. BERRY wished to read the deposition of a lady prisoner. ["No, no."]

Mr. HIGINBOTHAM objected. If the honorable member had any information to give, this was not the place to furnish it; besides which, it was only an *ex parte* statement.

Mr. O'SHANASSY agreed that the British government was the proper authority to deal with this subject, and reminded the House that nothing more had been done with the Shenandoah than had been done by the neutral powers of Europe in the case of other confederate vessels.

Mr. LALOR was under the impression that the governor, as the representative of her Majesty, had the power to deal with foreign vessels.

The subject then dropped.

In the legislative assembly yesterday, Mr. Berry called attention to the presence of the confederate ship Shenandoah in Hobson's Bay, and asked whether, as an infringement of the neutrality law had clearly taken place, the government intended to take any steps toward the confiscation of the vessel. Mr. McCulloch, in reply, stated that the honorable member had offered no proof of any infringement. In addition to the Queen's proclamation to guide them, the government had received private dispatches from home which had reference to a similar case. While the neutrality law would be strictly adhered to, the Shenandoah would be permitted to remain in Hobson's Bay until the necessary repairs had been effected, and the captain had taken in the coals and the provisions which were absolutely required. This statement was received with cheers from all sides of the House.

[From the Age of February 2, 1865.]

In the legislative assembly yesterday, the Speaker took the chair at half-past four o'clock.

A petition was presented from the miners, storekeepers, and other residents in Raywood in favor of the tariff. In reply to Mr. Crews, Mr. McCulloch stated that it was the intention of the government to bring in a bill to amend the law relating to the police force, and that the twenty-fourth clause of the present act had been repealed. Mr. Berry asked Mr. McCulloch whether the government intended to take any action with regard to the ship *Shenandoah*, now at anchor in Hobson's Bay, which ship, he stated, was the *Sea King*, reported to have been wrecked, but now sailing under another name. This statement he proposed to prove by means of a letter received by him from a lady, which showed this to be the identical vessel. He asked, further, whether it was intended to confiscate the *Shenandoah* and punish her officers for a misdemeanor in accordance with the provisions of the neutrality proclamation. Mr. McCulloch stated the government had had the matter under their consideration; and, besides having the neutrality proclamation before them, had also had a private dispatch from the imperial government, stating what had been done in a similar case, and that it had been found that they could not treat the *Shenandoah* as a pirate, and had not the power to interfere, but were bound to allow her to provision, and to effect such necessary repairs as were required to render her seaworthy.

THE SHENANDOAH.

Mr. BERRY called the attention of the honorable the chief secretary to the infringement of the neutrality proclamation by a vessel styled the *Shenandoah*, now in Hobson's bay; and asked whether the government intended to take steps to confiscate the vessel and to punish the officers for a misdemeanor, in accordance with the provisions of the said proclamation. In doing so, he remarked that the action of the government or of the people of this colony in respect to a vessel of the kind referred to might lead to complications between the mother country and a country with which she was on friendly relations. He did not wish to interfere in any way as between the belligerents, but he looked at the matter solely from an English point of view; and, looking at it in that light, he considered that the neutrality proclamation had been invaded.

The SPEAKER informed the honorable member that, in asking a question, he was not allowed to state his opinions, but must confine himself to a statement of facts.

Mr. BERRY said he believed it would not be denied that the evidence was quite clear that the vessel now in the bay was the *Sea King*. [A voice: No.] An honorable member said there was no evidence. Now he maintained that there was abundance of evidence. The *Sea King*, with a cargo of coals, sailed from London for Bombay, on the 8th of October last. All that had been heard of that vessel since, that he was aware of, was by a report in an English paper that reached this colony some time back, and in a letter in a Manchester paper, written by one of the men who left London in the *Sea King*, and returned home. In that letter it was stated that the confederate cruiser *Shenandoah* was the *Sea King*, and that the men who formed her crew went out in the *Laurel*. During the last few days, since the vessel was in port, it was a matter of common report, and had been stated in the newspapers that she was the *Sea King*. But he had had placed before him stronger evidence. He had seen the depositions of one of the prisoners, who said that during the passage the captain and officers stated that the vessel was the *Sea King*, and that the chief officer went out in her from London, while the captain went in the *Laurel*, in which vessel the armament for the *Shenandoah* was conveyed out to Madeira packed in boxes. That being the case, and as the vessel had never been in a port in any other country, she would, had she returned to a British port, have been seized and condemned. He maintained that there was no difference in respect to the way she should be dealt with, because she had arrived in a distant port. The government of the colony was as much bound to carry out the neutrality laws here as they would be within the bounds of the mother country. He thought there was sufficient evidence to demand that an inquiry should be made as to how a British vessel clearing out from a British port had entered on the piratical course of destroying vessels at sea, many of which were loaded with English cargo, owned by English merchants. The second section of the proclamation to which he had referred stated that not only was it a misdemeanor to fit out, arm and send a vessel to sea, but also that the vessel should be liable to confiscation by any officer of competent jurisdiction in her Majesty's dominions. If this vessel was proved to be the *Sea King*—and he held there was abundant evidence that she was—she ought to be confiscated, leaving out of the question altogether the parties who might be indictable for a misdemeanor. His only object in calling the attention of the chief secretary to this matter was that the facts might be brought prominently and unmistakably under the notice of the government, who, he took it, were as strictly anxious to enforce the

spirit of the proclamation as the home government could be. At the commencement of the war there was considerable looseness in the conduct of the home government, but there had been no looseness lately. The honorable the chief secretary would bear in mind that the "rams," fitted out by Mr. Laird, were seized by the government; and that, as they were informed by the last mail, a number of persons were seized in Liverpool under the first clause of the proclamation, which was directed to the prevention of enlistment. That showed that the British government were now strictly enforcing the provisions of the neutrality proclamation, and that should be an additional reason for attention being given to it here. He believed that, for all the vessels that had been destroyed by the Shenandoah, the federal government would, at some future time, claim compensation. That vessel, so far as they could judge, had no authority from the confederate government to act as she was doing. If this vessel was the Sea King, and if she sailed on a voyage to Bombay and was seized against the will of her owners and converted into a pirate, she ought to be taken possession of for the owners; and, if she was so converted with the consent of the owners, then she ought to be confiscated under the second clause of her neutrality proclamation. At any rate, he thought there was abundant evidence to require a scrutiny to be made as to this vessel.

Mr. McCULLOCH admitted that this was a most important question, and one that ought to be dealt with in a very cautious manner. He thought that, under all the circumstances, it would not be well for this legislature to enter on a discussion of the various matters that would be brought forward and allegations affecting this vessel, as those might be made the subject of inquiry by the imperial parliament. [Cheers.] It was said by the honorable member for Collingwood that this vessel was the Sea King. But what proof was there of that? [Cheers.] All the evidence they had was a newspaper report and a letter in a Manchester paper. The honorable member had not brought forward any other evidence than that. Still he said there was proof. It was said there were the letters "ing" on her side, which lead to the belief that she was the Sea King. But was that proof? [Cheers.] Although, however, there was proof that this vessel was the Sea King, he questioned whether this government could deal with this ship as a pirate. [Cheers.] During the last week the government had given a considerable amount of attention to this question, desiring to carry out strictly the rules with reference to such vessels; and with that view they had had under consideration, not only the neutrality proclamation, but also dispatches from the imperial government regarding such cases. They had also had brought before them a case exactly similar to the case of this vessel. All the circumstances were exactly similar to those of this case. The government having considered this case, and well weighed it, had come to the conclusion that they would not be justified in treating this vessel as a pirate; but they would insist upon strict neutrality being observed, and the vessel would only be allowed to remain in port so long as was necessary for her to take in what was necessary for the support of her crew, and to have such repairs effected as were required to enable her again safely to go to sea. [Cheers.] The government felt they could not go any further in this matter. [Cheers.]

Mr. BERRY stated that as the honorable the chief secretary had denied that there was sufficient proof that this was the Sea King, he would like to make the matter complete by reading a deposition that was made that day, in his presence, by one of the prisoners she brought here.

Mr. HIGINBOTHAM said he must object to the course taken by the honorable member. [Cheers.] If the honorable member had evidence he could submit to the government, that was not the proper place to bring it forward. [Cheers.] He would beg leave to suggest that the honorable member should not read documents in the house that ought to be laid only before the government.

Mr. O'SHANASSY thought that the colonial government was not the proper authority to deal with this matter. He concurred in what had been stated by the honorable the attorney general, that *ex parte* statements, taken by any party, should not be read in that house. They ought to deal with the utmost impartiality in this matter, which was the best way to secure the countenance, so far as they could, of the friendly relations between the mother country and the federal government. The Alabama, when she visited Cherbourg, was allowed to remain there for some time, and get supplies and repairs; and the Florida was allowed to lie in the port of Brest for three or four months. They could not do better, in his opinion, than follow the example of a nation that had had so much experience in those matters. He thought the honorable member might well now let the matter drop.

Mr. LALOR considered that it was wrong to discuss the matter in that house at all. His excellency, he considered, alone had full power to deal with the matter. It was wrong to bring the matter forward here and compel persons to take different sides. If the honorable member were to do so, he ought to give notice of motion, so that the question might be fairly discussed.

The subject then dropped.

[From the Argus of February 2, 1863.]

A discussion arising out of the presence in Victorian waters of the confederate war steamer *Shenandoah*, took place in the legislative assembly yesterday. Mr. Berry, who initiated the discussion, called attention to the Queen's proclamation of May, 1861, declaring that the arming and sending out of vessels, with the view of handing them over, by sale or otherwise, to a belligerent, was a misdemeanor, and that the vessel was liable to confiscation by any officer having competent jurisdiction in any port of her Majesty's dominions. There was abundant evidence (said Mr. Berry) that the vessel now in Hobson's Bay was the *Sea King*, which cleared from London about the 8th of October for Bombay, with a cargo of coals; and that she had destroyed vessels at sea, some of them being loaded with cargo belonging to British subjects. He held that there should be as great an observance of neutrality laws here as in any other part of the British empire; and he begged to ask whether the government intended to take steps to confiscate the *Shenandoah*, and to punish the officers for a misdemeanor. The chief secretary observed that, beyond reports and rumors, there was no proof that the confederate vessel was formerly the *Sea King*. At the same time the government were fully alive to the importance of the subject. During the last week they had given considerable attention to the question; and they had arrived at the conclusion that, on the information before them, they would not be justified in treating the *Shenandoah* as a pirate. It would, however, be the duty of the government to see that strict neutrality was maintained, and with that view the vessel would be allowed to remain in port only so long as would be actually necessary for victualing and repairs.

WEDNESDAY, February 1.

The speaker took the chair at half past four o'clock.

THE CONFEDERATE WAR STEAMER SHENANDOAH.

Mr. BERRY, in rising to call the attention of the government to this subject, would briefly state the object he had in view. That object was simply that no act of the government or people of this colony should tend to complicate the relations of the mother country with a friendly nation. He did not wish to enter into the question of the rights of either of the two belligerents at all, but only to deal with the question from an English point of view—["Oh, oh"]—and to see whether the proclamation made by her Majesty in 1861 had not been grossly violated in the matter of a vessel now lying in Hobson's Bay.

The SPEAKER called the honorable member to order. In putting a question no honorable member was allowed to state an opinion or to go beyond the mere facts of the case. [Hear, hear.] Otherwise there was no knowing what discussion might not ensue.

Mr. BERRY intended strictly to confine himself to a mere statement of facts. He believed it would not be denied that evidence existed in this city that clearly and unmistakably showed the real name of this vessel to be the *Sea King*, because on that fact he founded nearly the whole of his remarks.

An honorable MEMBER. There is no such evidence.

Mr. BERRY continued to say that the *Sea King* was a vessel which sailed from London about the 8th of October last, bound for Bombay, with a cargo of coals, and all that was heard of her since, that he was aware of, was a report which reached this country in an English paper, some time back. He had found it in a Manchester paper of November 19th last, which alluded to her under the title of "the confederate cruiser *Shenandoah*, late *Sea King*." The paper stated:

"We received a letter yesterday from part of the crew of the *Sea King*, who returned to England in the African steamer *Calabar*. The men state that the *Sea King* is now called the *Shenandoah*."

So the paper went on to allude to the men who came back after having gone out in the *Laurel*, and this was an important part of the facts of the case. In addition to that, he believed that within the last few days, since this vessel had arrived in Hobson's Bay, it had become a matter of public report—never denied, and stated in the public newspapers—that she was without doubt the *Sea King*. Besides, he had had placed personally before him still stronger evidence that such was the case. He had seen the depositions of prisoners taken out of different vessels, who stated that it was openly admitted on board, both by the captain and officers, that the original name of this particular vessel was the *Sea King*. In fact, the first lieutenant of the *Shenandoah* came out in the *Sea King*, while the captain and the rest of the officers came out in the *Laurel*, and then joined the first vessel at the Island of Madeira. The armament of the *Sea King* was, it seemed, brought out by the *Laurel*, packed in boxes, and so put

on board. The position he took up was, that under the proclamation of neutrality by her Majesty, had the Shenandoah returned to any English port after having destroyed other vessels, she would have been instantly seized and condemned, and he could see no reason why, because she had gone a much greater distance, and arrived at a colony of the British empire, that she should be treated differently. The colony was a part of the British empire, and the government were bound to carry out the neutrality laws as if we were within the bounds of the mother country herself. It was not necessary to state any further facts on this part of her case. At all events sufficient evidence had been given to cause inquiry as to how it was that a British vessel, sailing for a peaceful voyage to Bombay, and having subsequently gone into another port, suddenly appeared in another part of the British empire after having destroyed many vessels at sea, some of them loaded with English cargo and owned by Englishmen. If that were the case it would not be necessary for him to read any portion of the proclamation on the strength of which he had now spoken. It was no doubt well known to the government that by the second section it was not only made a misdemeanor to arm or fit out such vessels, but also to send ships out to sea with a view of handing them over, by sale or otherwise, to either of the belligerents. Such persons were not only made subject to punishment, but their ships were liable to confiscation by any officer having competent jurisdiction within the British dominions. He had stated the fact without reference to individuals. If this vessel were proved to be the Sea King—and there was abundant evidence for the government that she was—he wished to inquire why the confiscation of the vessel was not carried out under the neutrality proclamation, leaving out of the question who were the parties or their representatives indictable for misdemeanor. He doubted if he need go further. The only object he could possibly have was that the facts should be prominently and unmistakably brought under the notice of the government. He took it that they would be anxious to enforce the spirit of this proclamation the same as at home. [Mr. Francis. "Hear, hear."] He would, however, point out that whatever might have been the looseness of the construction of this proclamation in the earlier stages of the war, there was no such looseness on the part of the English government now. The honorable chief secretary would bear in mind that the rams fitted out in Laird's yards were stopped by the British government, and, on the other side, the last mail brought news that certain passengers and emigrants from Liverpool to North America were also stopped under the first clause of this proclamation, which prevented enlistment for either of the belligerents. The fact of the British government enforcing this proclamation so strictly supplied important additional reasons why every attention and care should be given to the subject here. It must be within the knowledge and memory of the honorable chief secretary that all the vessels destroyed on such a cruise as that of the vessel now in Hobson's Bay would at some future time be claimed by the American government from the British government. Here was this vessel. She had touched at no port, and no one could tell whether or not she had authority from the confederate government, because there was no authority here to test the validity of a confederate commission. It must be clear to any mind that the parties in possession of this vessel were on the horns of a dilemma. If she were the Sea King—

The SPEAKER. The honorable member is not in order.

Mr. BERRY would only say that if she were the Sea King, on her voyage to Bombay, as the declaration stated, she might have been seized against the will of her owners, and so converted into a pirate. If so, she was subject to be dealt with as having been taken against the will of her owners. If she could not be dealt with as a pirate, the owners were on the other horn of the dilemma, inasmuch as she had committed a breach of the second clause of the proclamation to which he had alluded, and should be on that ground confiscated by the government. Having brought this matter forward, he should conclude by saying that he was quite sure there was abundance of evidence to prove that the vessel in question was the Sea King, and ask the honorable chief secretary, pursuant to notice, whether the government intended to take steps to confiscate this vessel and to punish the officers for a misdemeanor in accordance with the provisions of the proclamation alluded to?

Mr. M'CULLOCH, in reply, had no hesitation in saying that this question was a most important one, and should be dealt with in a most cautious manner. [Hear, hear.] Under all the circumstances of the case it would be well if, at this present time, the House did not go as fully into the discussion of the various matters and alleged facts respecting this ship as would be required in the imperial Parliament. The honorable member had stated that this vessel was the Sea King, but what proof had he? [Cries of "Hear, hear," from all parts of the House.] There were the newspaper reports and a letter addressed to a newspaper in Manchester that the Shenandoah was the Sea King, but the honorable member had not brought forward one single particle of proof to substantiate anything that went beyond that. [Hear, hear.] He said reports were going abroad in this city, and he (Mr. M'Culloch) had heard it stated that the remains of the words "Sea King" were to be seen on the sides of the ship, but was that any evidence of the transfer which it was said had taken place? [Hear, hear.] And even

if such were the case, it was a question if the government could deal with the ship as a pirate. ["Hear, hear," and cheers.] The government had done a great deal in discussing this question. For the last week they had given a considerable amount of attention to it, desiring to observe as strictly as possible the rules laid down for the guidance of this and all other colonial governments. In dealing with this vessel they had not only to consider the terms of the proclamation referred to, but also the confidential instructions from the home government; and, moreover, they had had brought before them the case of a vessel in exactly the same position as the *Shenandoah*. All the circumstances which occurred with regard to this other vessel were in the possession of the government and would be weighed in connection with the present matter, but he believed the government would not be at all justified in treating this vessel as a pirate. [Cheers.] While insisting as a matter of course that strict neutrality should be maintained as far as possible, he would observe that the vessel had only been allowed to remain in port so long as was necessary for taking on board the supplies necessary for the support of her crew and to complete repairs which were necessary to allow the ship to go to sea. Beyond this the government would not move in the matter. ["Hear, hear," and cheers.]

Mr. BERRY, before the discussion closed, wished to say that he had omitted a good deal of what might be brought forward, being in expectation that his statement would not have been denied. He would like, to make his case complete, to read, for the information of the chief secretary, a deposition given in his presence that day by one of the passengers, a lady, taken by this vessel. [Cries of "Order," and "No, no."] If the matter was of the importance stated, any information given to the government ought to be freely availed of by them. It was only a short deposition, and would not take long to read.

Mr. HIGGINBOTHAM objected to the course now taken. This was not the proper place or time [cheers] for the honorable member to read a document that might, perhaps, provoke discussion as to its value and effect. If it was considered at all, it should be considered by the government in private.

Mr. O'SHANASSY wished, on the point of order, to speak to the statement made that this vessel was taken by force at sea, and against the consent of the owners.

Mr. BERRY. I did not say so.

Mr. O'SHANASSY would, however, point out that, in that case, the owners would have applied to the British government, who were the proper authorities, and not the colonial government. If this vessel were not taken by force, but sold, then the charge of piracy fell to the ground. He (Mr. O'Shanassy) concurred in what had fallen from the honorable attorney general, that an *ex parte* statement ought not to be received in that House. It was only fair to all parties that no favor should be shown either on one side or the other. What did the French government do in respect to the *Alabama*? They gave her permission several times to refit, and the *Florida* remained in one of her ports for months. Why, then, should this colony refuse to do to a vessel that came here that which other powers were willing to do, and this with experience to guide them? The honorable member might as well have let this matter alone. [Cheers from all parts of the house.]

Mr. LALOR said it struck him that the House was wrong to discuss the matter. His excellency the governor was the representative of her Majesty, and he alone had full powers to deal with this matter. [Hear, hear.] He (Mr. Lalor) did not know the law of the case, but believed the governor alone could deal with a vessel belonging to a foreign power. He protested against a discussion which was unfair to all parties, and might compel honorable members to take sides. He hoped the matter would not be pressed further, unless full notice was given, and then both sides could be heard. At the same time, he might mention that he took a view altogether opposed to that of the honorable member for Collingwood. [Cheers.]

The matter then dropped.

[From the Herald of January 27, 1865.]

THE CONFEDERATE CRUISER SHENANDOAH.

In yesterday's publication we gave all the particulars then obtainable respecting the confederate war steamer *Shenandoah*, which arrived in Hobson's Bay on Wednesday afternoon. A personal visit to the vessel yesterday has enabled us to largely increase our stock of information on the subject, and the result of our inquiries we now place before our readers. Previously, however, we direct their attention to the two accompanying paragraphs, the contents of which throw a light on the history of this new successor of the *Alabama*. They are from the *Home News* and the *Index*, and although apparently referring to different vessels, really have reference to the same, for it now

appears that the Sea King of the Home News is the Shenandoah of the Index. The first-named journal in its publication of the 26th of November says:

"A few weeks ago, the departure from Liverpool took place of a steamer called the Laurel, with about one hundred men on board, many of whom had served with Captain Semmes. It was also asserted that Captain Semmes was himself on board. A dispatch lately received in Liverpool from Madeira is to the effect that the Laurel had been lying in Funchal Bay for several days previous to the 17th of October, and early on the morning of that day she steamed out to sea and met a large screw steamer, (understood to be the new Alabama,) on board of which were transferred the crew of the Laurel and cargo, consisting of guns, ammunition, &c. The screw steamer then made for the direction of Bermuda. [The name of the latter vessel is said to be the Sea King, 1,200 tons, which recently cleared out of the East India dock for Bombay, but whose real destination was Madeira. It is alleged that she has since run on a rock, and it is feared will become a total wreck.]"

The Index, a journal published in London, in the interest of the southern confederacy, has the following in its issue of the 19th of the same month:

"*A new confederate cruiser.*—We have much pleasure in being able to state that, almost at the same time when the Florida was treacherously seized in Bahia harbor, the confederate flag was hoisted on a new cruiser at least the equal of the Florida in armament, speed, and general efficiency. The Shenandoah starts upon her career with every prospect of emulating the fame of her predecessors. She is commanded by Lieutenant Waddell, Confederate States navy, and a gallant staff of officers. Having received her crew and armament—everything, in fact, that constitutes her a belligerent vessel—on the high seas, far beyond any neutral jurisdiction, there can fortunately be no pretense of accusing her of any violation of municipal laws or international obligations. It is evident that federal commerce is balked of the expected reward of the murderous outrage in Bahia; for already the telegraph has advised us of the doings of no less than three confederate cruisers, the Tallahassee, the Chickamunga, and the Olustee, all of which have recently issued from their own ports and are busy at work avenging the Florida's fate. To this formidable list of ubiquitous enemies the New York Chamber of Commerce must now add a fourth; and confederate sympathizers, paraphrasing the familiar 'Le roi est mort—vive le roi!' may exultingly exclaim, 'The Florida is gone—long live the Shenandoah!'"

[From our own reporter.]

The arrival of a vessel of war belonging to the Confederate States of America in Hobson's Bay caused no little excitement in the city yesterday, and the object of the stranger's visit was actively canvassed on every side. We mentioned yesterday that Captain Waddell, the commander of the Shenandoah, immediately on his arrival dispatched one of his officers to Toorak to report that the vessel had entered the bay, and that, under the royal proclamation of neutrality, he requested permission to remain in these waters for a short period for the purpose of coaling, provisioning, and effecting certain necessary repairs to the machinery. As a matter of courtesy, until his excellency's reply was received to the request, the captain declined to allow any person to visit his ship, neither would he permit any communication with the shore. The numerous boating parties which hovered around the ship yesterday morning were politely informed of this determination, and they were forced to content themselves with sailing round the vessel, and scrutinizing her exterior. In the meanwhile a meeting of the executive council was called, and the desire of Captain Waddell was fully discussed. According to international maritime law, as expressed in a dispatch from Earl Russell, the secretary of state for foreign affairs, and dated 31st of January, 1862, published in the government gazette on the 24th of April in the same year, it is laid down that vessels of war belonging to a belligerent power are not allowed to enter a neutral port unless they require supplies, coal, &c., or need repairs, and they must comply with the following conditions: They must take in their necessary supplies as soon as they can, as much coal only as will enable them to get to the nearest port in their own country or to the next port of destination, and then leave the neutral port of refuge as soon as possible. Captain Waddell was in want of coals and provisions, and required a new band to the propeller shaft of the screw. Under these circumstances the requested permission was granted, but it was not until between three and four o'clock in the day that the intention was made known on board. The excitement which prevailed in town was very great, and the desire to get on board was heightened by the belief, which was pretty generally entertained, that the renowned Captain Semmes, of Sumter and Alabama celebrity, was on board, if not actually in command. We can, however, give the assurance that the gallant officer mentioned is not in the ship, but that some of the officers and five or six of the men who served with him in his voyages in both the Sumter and Alabama are now serving with Captain Waddell in the Shenandoah. From early morning the crowd of persons who proceeded by the Hobson's Bay railway to Sandridge was very large. Many contented themselves with an observation of the vessel from the end of

the pier. The white flag with the thirteen stars placed diagonally in one corner, with the old battle-flag at the fore, being easily discernible from the peak, afforded a clear indication of the whereabouts of the confederate cruiser. Others, notwithstanding the warning conveyed to them that they would not be permitted to set foot on the decks until the intentions of the government were made known, nevertheless cruised around the vessel and endeavored by personal observation to ascertain whether she was not identical with the *Sea King*, of which information had already been received. These observers were rewarded for their pains in ascertaining some clue to the apparent mystery by the partial obliteration of the three remaining letters of the last word of the former name on the trail-board. However, Captain Waddell finding how anxious the people of Melbourne were to inspect his ship, at length permitted visitors to come on board. On this announcement being made known, hundreds of persons availed themselves of the accorded privilege. Every licensed boat was made available for the service, and two or three steamers crowded with passengers plied between the Sandridge pier and the war vessel in the bay. The visitors were most courteously received by the officers, who afforded any information requested of them, and on the departure of each successive party the welcome they had received was acknowledged by three cheers. A tolerably stiff breeze was blowing in from the south, and a small whale boat in rounding to at the stern of the vessel was caught by the wind and capsized. A lady and two gentlemen who were in the boat were thrown into the water. Some alarm was created by this unlooked-for catastrophe. The lady clung to the edge of the boat most courageously, and the whole three were speedily rescued without suffering anything further than a rather unpleasant immersion.

The *Shenandoah* has brought eleven prisoners to this port, including Mrs. Nichols, the wife of Captain Nichols, and the stewardess of the *Delphine*, last captured. They all went on shore yesterday morning. At sea the prisoners were kept in irons at night, except those on parole. No complaint as to treatment received on board has been made by any of the prisoners. The officers of the confederate ship visited the city yesterday and inspected the different public places, including the legislative assembly.

The *Shenandoah*, one of the latest adjuncts to the confederate navy, is a vessel of 1,160 tons English register, and about 1,400 American. She was built in the Clyde a short time ago, and having become the property of the confederate government, sailed from the East India docks for Madeira. Her appearance is that of a merchant clipper, and were it not that the muzzle of four guns peered from the ports of her broadsides, no one would ever think of taking her for a man-of-war. Her length and general build would at once indicate her as being a fast sailor, and we are informed that her average is thirteen knots; while under reefed canvas she has frequently gone at the speed of eleven knots. The upper deck of the *Shenandoah* presents no extraordinary features. Her armament consists of eight guns. Forward there are two thirty-two pounders, rifled Whitworth's; amidships, four sixty-eight pounders, smooth-bore; and aft, two small twelve pounders. The 'tween-decks are very lofty, being about eight feet in height. The space is kept clear, and with the exception of a small table and two or three cushioned forms, nothing obstructs the center of this deck. Even the hammocks of the crew are stowed out of reach, and all the furniture and effects visible are a few neat-looking trunks, which, from their appearance, seem to have been taken from some prize vessel. The cabin is the ordinary saloon of a merchant ship. The state-rooms, two good-sized apartments, are occupied by Captain Waddell. Nearly all the furniture they contain has been picked up on the cruise, a sofa from one prize, a chair from another, and so on with all the articles. The saloon is the wardroom for the officers, and their sleeping rooms are ranged on either side of the cabin. They, too, have been fitted up in the same manner as the commander's.

Having said so much about the vessel, we now turn to the crew. The commissioned officers number about twenty, a very large proportion considering the smallness of the crew. The officers wear a gray uniform with gold facings, and Captain Waddell wears two gold bands around the sleeves, denoting his rank, after the fashion of the officers of the British navy. Captain Waddell, whose personal appearance is highly prepossessing, is a thorough sailor. He has been twenty-three years in the American navy, and on the commencement of hostilities he proceeded to South Carolina, to fight for his State in the cause of the South. Among the number of her officers are three who have served in the Alabama, and were in her when she was sunk by the *Kearsarge* off Cherbourg. They are Mr. Bullock, the master, Mr. Smith, the paymaster, who was the captain's clerk, and Mr. O'Brien, the engineer, then third assistant engineer. The crew are seventy-five in number, and comprise natives of nearly every country in Europe and one or two negroes, but the majority are British subjects. On ordinary service they wear a rough, grayish-brown uniform dress. A very large number of the men have joined since leaving the port of departure, and have been captured in the prizes. They are a happy and apparently well-contented lot, express great confidence in their commander, and are well pleased with the service in which they are engaged.

We now proceed to give some account of the *Shenandoah* from the time of her setting out on her present cruise, some three months ago. On the 8th of October, 1864, a

small party left Liverpool in a steamer called the Laurel, and on the 14th of the same month arrived at Funchal, the capital of the island of Madeira. There she was regarded as a thorough blockade runner in the confederate service, but the men were not allowed to go on shore. Some short time previous to the arrival of the Laurel some Polish passengers had visited the island, and quitted forgetting the hotel accounts they left behind them, and the inhabitants were made to believe that the crew of the Laurel were men belonging to the same nation, *sans argent*, so that their presence on shore was not much cared about, at least by the hotel-keepers. On the 18th of October a vessel entered the harbor and steamed up to the east side close alongside the Laurel. This vessel was the steamer now in Hobson's Bay. She had arrived from London, having been purchased there for £45,000, and the crew, or part of them, of the small steamer, having been transferred on board the new purchase, she quitted the harbor, and when far beyond the jurisdiction of Portugal the confederate flag was hoisted, and the vessel was christened the Shenandoah. Not a box had been opened up to this time, and now Captain Waddell found himself in command of a ship of war commissioned and equipped to deal destruction to the merchant service of the federal States. The crew at this time only consisted of twenty-three officers and men, a very small complement indeed for a vessel of this size. After deducting the number required for the engineer's department, stewards, &c., only ten remained for working the vessel, or five in a watch. At the outset all was confusion, but the officers stripped off their jackets and assisted the men. The plan adopted was to steam by day and sail by night. Captain Waddell at once kept out in the ocean, always out of sight of land. On the 29th of October, in latitude $16^{\circ} 47' N.$, longitude $26^{\circ} 43' W.$, when the Shenandoah had only been out ten days, the word was passed that a vessel was in sight. The royals were set, and the cruiser bore down in chase with the English colors flying. The stranger hoisted the American flag, and a gun fired across his bows brought him to. The vessel, which was taken as a prize, proved to be the bark Alissa, Captain Staples, with a cargo of railway iron, bound for Buenos Ayres, and from thence to Akyah for rice. The master and mate, with a crew of ten men, were transferred to the Shenandoah, and eight of the men immediately joined the confederate service. The cargo was valued at \$38,000, and the bark, which was scuttled, at \$50,000. The crew of the confederate had now been increased to twenty-nine men before the mast, and the ship was consequently better worked. On the 5th of November, at daylight, in latitude $7^{\circ} 38' N.$, longitude $27^{\circ} 49' W.$, the cruiser got under steam and proceeded in chase of a schooner, which was reached at 7.30 a. m. She proved to be the Charter Oak, 400 tons, from Boston, bound to San Francisco, with an assorted cargo. The crew having been removed, she was burnt. The schooner was valued at \$22,000. Captain Gilman, his wife, and her sister, were taken on board the cruiser. The last named was the widow of a corporal in the federal army who was killed at Harper's Ferry. Captain Waddell gave her his own cabin, and the whole party were well treated. Private property was respected, but a sum of \$200 was taken from Captain Gilman and given to his wife as a present from the confederate government, on the condition, which she promised to comply with, that she was not to give it to her husband. A quantity of preserved tomatoes (about 2,000 pounds weight) was taken, and the ship's company have since been living upon tomatoes. On the 7th November, two days afterward, in latitude $6^{\circ} 28' N.$, and longitude $27^{\circ} 6' W.$, the bark D. Godfrey, bound from Boston to Valparaiso, was fallen in with. Her cargo consisted of 400 barrels of beef. Her crew consisted of twelve men, nine of whom volunteered to join the southern service. The vessel was burnt and the cargo destroyed. On the 9th of November a Danish brig was communicated with, and the master consented to take Captain Staples and Hallett, with four mates and two men who had been captured, in consideration of receiving from Captain Waddell a chronometer, a barrel of beef, and a barrel of bread. The prisoners were transferred, and the brig departed on her way to Rio Janeiro. On the 10th of November, at daylight, in latitude $4^{\circ} 20' N.$ and longitude $26^{\circ} 39' W.$, the brig Susan of New York, Captain Hansen, was captured, with a cargo of Cardiff coal. She was scuttled, and two seamen and a boy were shipped. The master himself wanted to volunteer, but he was not pressed. When the Susan sank, at 10.30 a. m., she went down bow first, and the main truck sank while the stern was above the surface of the water. On the 12th of November, in latitude $2^{\circ} N.$ and longitude $28^{\circ} W.$, the clipper ship Kate Prince, of Portsmouth, New Hampshire, was seen. She was observed in the evening from the masthead on the port beam, and the course of the Shenandoah was changed so as to cut her off. All the prisoners, some fifteen in number, were transferred to this vessel, which was bound to Bahia with 1,700 tons of coal. The cargo was sworn to be English, and Captain Waddell bonded the ship for \$40,000. Captain Sibley, the master, in return sent to the cruiser two barrels of potatoes. On the same day and in the same latitude, the bark Adelaide, of Baltimore, bound to the river Plate, hove in sight. She had a neutral cargo on board, and the vessel was bonded for \$23,000. On the day following, in latitude $1^{\circ} 40' N.$, longitude $28^{\circ} 24' W.$, the schooner Lizzie M. Stacey, of Boston, bound for Honolulu, Sandwich Islands, with an assorted cargo, was captured and burnt. Her crew, three in number, volunteered for the service.

Among the number was a Baltimore negro named Charles, who, singularly enough, recognized another negro, named John, captured in the *D. Godfrey*. The two niggers had lodged in the same house, shipped in different vessels, and were afterward captured by the same cruiser within a few days of each other. About this time Captain Waddell observed a vessel in distress, with her mainmast cut away. She would not make any signal, and although there were five vessels around she would not notice any of them. On the 24th of November the *Shenandoah* started in chase of the ship *Rubens*, of Stockholm, bound to the Cape of Good Hope, but did not succeed in coming up to her. This was in latitude $24^{\circ} 44'$ S., longitude $31^{\circ} 28'$ W. She also showed colors to an English ship on the same day. On the 4th December, in latitude $34^{\circ} 47'$ S., longitude $12^{\circ} 30'$ W., the whaling bark *Edward* was captured, and burnt after the stores had been removed. One seaman was shipped, but the remainder, consisting of Portuguese, were not pressed. They were afterwards landed, with other prisoners, at *Tristan d'Acunha*, on the 27th of December. Captain Waddell here bought some beef and sheep, and in return gave the inhabitants sixty day's salt provisions. The last capture was made on the 29th of December, in latitude $39^{\circ} 10'$ S., longitude $69^{\circ} E.$, the bark *Delphine*, Captain Nichols, bound for Akyab from London for a load of rice. She had on board about 300 tons of cargo. The vessel was burnt, and the crew, eight in number, were shipped on board the confederate. On one occasion the *Shenandoah* chased a steamer which was proceeding with all sails set. After going three or four miles, an impression was formed that she was a British man-of-war, and the chase was at once abandoned. Since his arrival in port, Captain Waddell believes this vessel to have been her Majesty's steamer *Brisk*, recently arrived at Sydney. The process of boarding was always looked forward to by the officers and crew of the *Shenandoah* with the greatest interest. Everything worth having was first taken from the prizes, and the hatches, after being filled with straw and tar, were set alight.

Although the ordinary dress of the confederate service appears to be a dark brown, the men are habited in various costumes, as occasion requires. At one time the cruiser, with stars and stripes flying, bore down upon a vessel, and in answer to the usual hail, announced herself as a federal man-of-war, but the stranger replied by hoisting Danish colors. Sunday has always been strictly kept on board, and on that day no manner of work further than that actually required for working the vessel has been accomplished. From the latitude of the Cape the *Shenandoah* has come direct under sail to this coast without calling at any place. Captain Waddell requires to remain in this port a few days in order to repair the vessel's machinery, and as an earnest of his intention, Messrs. Langlands & Co. have been engaged to effect the necessary repairs. Captain Nichols, of the bark *Delphine*, states that when his ship was boarded the papers were examined, and, being found American, were taken possession of, with the nautical instruments and the provisions which were required, before the ship was burnt. The persons taken off consisted of the captain, eleven men, and a steward: also Mrs. Nichols and child. Several ships were hailed, but they all showed English colors. The papers of the *Nimrod*, formerly the *Sancho Panza*, bound to Adelaide, were investigated. We understand there is a nephew of General Lee, Mr. Sydney Smith Lee, on board the confederate ship. In conclusion, we may mention that Captain Waddell has most courteously thrown his vessel open to the inspection of the public, and that steamers and small boats ply to and fro at all hours of the day.

[From a Melbourne paper, dated February 16, 1865.]

SEIZURE OF THE SHENANDOAH.

Great excitement prevailed in town yesterday relative to the alleged seizure of the *Shenandoah* by the Victorian government; and it was stated by many persons that the government had overstepped their powers in making such a seizure. It will be seen, however, that no seizure at all was made, and that the authorities merely restrained British subjects from assisting in repairing the vessel until the neutrality regulations had been observed. Taking up the narrative of events at the points reached in our yesterday's issue, we may remark that the surmise was correct that an attempt would be made to launch the *Shenandoah* yesterday morning. At about a quarter to five a. m. the steam-tug *Black Eagle* was seen approaching the slip, and when within hailing distance was challenged by the sentries who were stationed on the piers on either side. The reply to the challenge was that the tug had been engaged to come at that hour for the purpose of towing out the *Shenandoah*. The master of the tug was forbidden to approach any nearer, and, after some parleying, he steamed out again.

At three o'clock yesterday afternoon Mr. Superintendent Lyttleton, who had been to Melbourne for instructions, returned to Williamstown, and, in accordance with an order which he had brought from the governor, withdrew the police who had been put

in charge of the Shenandoah. A considerable number of people had crossed over from Sandridge in expectation of some sensational scene, but the affair passed off very quietly. The repairs of the vessel are now completed, and, when she has taken in some coal, she will be ready to proceed to sea.

From the ministerial explanation given below, and which was made in the house yesterday, it will be seen that four men—British subjects—were arrested on Tuesday evening, upon leaving the Shenandoah, and that one of these was the man Charlie, for whom the warrant had been issued. When arrested, they gave their names as James Davison, Franklyn Glover, Mackenzi, and Walmsley. They were brought up before Mr. Call, P. M., this morning, and shortly examined; but, as Mr. Call had to attend the police court at Footscray, he adjourned the inquiry until the following morning.

THE MINISTERIAL STATEMENT IN THE ASSEMBLY.

As soon as the speaker had taken the chair in the legislative assembly yesterday—

Mr. O'SHANASSY rose and said: Seeing the honorable the chief secretary in his place, I would wish to ask him, without notice, if he would be good enough to lay on the table a copy of the correspondence that has passed between the government and the commander of the confederate steamer Shenandoah since her arrival in this port.

Mr. McCULLOCH said: I cannot at present consent to lay the correspondence on the table of the house, as it would be undesirable to do so. If the honorable member wishes information as to what has been done with the ship, I have no objection to make a general statement on the subject.

Mr. O'SHANASSY. My reason for asking that the correspondence should be laid on the table is that honorable members, and also the people of the country generally, should know exactly what has been done. In a general statement the information is not so correct; but I do not mean that it is intentionally so. If there are any reasons for withholding the correspondence, I would not press for it.

Mr. McCULLOCH. This correspondence passed between his excellency the governor and the commander of the Shenandoah. It was not with the government. As honorable members are aware, this vessel arrived in the bay some three weeks ago. The captain at once put himself in communication with his excellency, and asked that he might be permitted to have certain repairs made, and to obtain such supplies as were necessary to enable him again to put to sea. The government at once put themselves in a position to ascertain, from all dispatches that had been received, and by giving the fullest consideration to her Majesty's proclamation, the course which should be pursued. The result was that Captain Waddell was informed that he would obtain liberty to make all necessary repairs to enable his vessel again to go to sea, and to take in necessary supplies of provisions. At the same time his attention was called to the necessity of his keeping within the strict terms of neutrality. Captain Waddell acknowledged the act of the government, stating at the same time that he would maintain a strict neutrality. Some time elapsed and nothing was done, in so far as few repairs were being executed on the ship. The government, in order to secure that a position of strict neutrality was maintained, appointed a board to inquire and report as to what repairs were necessary to render the vessel fit to go to sea; not that she should be so repaired as to make her better fitted as a war ship, or for the purpose for which she was fitted out, but that she should only be made fit to go to sea from this port. It was found that certain repairs were necessary, and that for the completion of those repairs the vessel would have to be taken on to the slip; and here I may remark that it has been stated that this is the government slip, but it is nothing of the kind. In one sense it is the government slip, but in another it is not, as it has been leased to a private individual. The ship has been on the slip for several days. Within the last two or three days information has been forwarded to the government to the effect that there were certain parties concealed on board the ship—Englishmen, who had gone on board since the vessel arrived in this port, and that with the view of joining the ship as seamen. Such being contrary to the provisions of the foreign enlistment act and the proclamation of her Majesty, the government found they could not shirk dealing with the matter; and, as the information was furnished on sworn affidavits, the government felt themselves obliged to take immediate steps to ascertain if the neutrality of the port had been violated; for, while the government was bound to observe strict neutrality toward the vessel, her officers and crew, they were also bound to demand that Captain Waddell should, with equal strictness, observe the neutrality of the port. [Cheers.] Well, a warrant for the apprehension of an Englishman named Charley, a native of London, was issued by the Williamstown bench. The warrant was presented on Monday evening. The captain was not then on board, and so the warrant was presented to the first lieutenant. That officer refused to allow the inspector of police to go on board to ascertain if Charley was on board, at the same time giving him distinctly to understand that there was no such person on board. Well, the government did not wish at that time to take decided steps, as the captain was not on board when the inspector first visited the ship.

The inspector, however, was instructed to go on board again when the captain was there. He went next morning, (Tuesday morning,) and met with the same reception from Captain Waddell, who stated, on his honor and faith as a gentleman and an officer, that there was no such person as Charley on board. Well, the government had so many distinct statements made to them by persons resident in Melbourne that there was such a person on board that they considered they were obliged and bound in duty, both to this colony and to the mother country, to take all proper steps to ascertain whether such was the case or not—whether this man was on board or not. The government having given a considerable amount of anxious attention to all the points on the subject—which may yet turn out to be a matter of very considerable importance—came to the conclusion that the governor should issue an order under the foreign enlistment act; and, looking to the strong proofs we had before us of the violation of the act, we felt bound to issue orders to all her Majesty's subjects that they should refuse to continue the task of repairing the vessel, and should not give any aid in launching the ship till the government was satisfied that the documents that had been put in their hands, stating that there were Englishmen on board, were incorrect. At the same time a letter was sent to Captain Waddell, calling his attention to all the circumstances of the case, and asking him to reconsider his determination, pointing out to him that this was a violation of an act of the British Parliament by a British subject, and that he ought to put the government in position to ascertain whether that person had been guilty of violating the acts of this country. His attention was also called to this circumstance, that it was desirable, for his own sake, if those statements were false, that he should put the government in a position of being able to prove that they were false, and of bringing the parties to punishment for making such statements. This letter was delivered to Captain Waddell yesterday about six o'clock in the afternoon, and the messenger waited for an answer. At ten o'clock last evening a letter in reply was forwarded to the commissioner of trade and customs. And here he wished to point out that Captain Waddell kept the messenger waiting for four hours. [Hear, hear.] The letter, which was dated last night, was dispatched by Captain Waddell at ten o'clock—at ten o'clock last night. In this letter he again refuses to allow the warrant to be executed, or, rather, he states that he did not prevent the execution of the warrant because it was for a person named Charley, and there was no such person on board the ship. [Cries of Oh! Oh!] He again repeated his statement that there were no parties on board the ship but those who were on board when she entered the bay, and stated at the same time that he had observed the strictest neutrality. This letter came into my possession at one o'clock in the morning, and at seven o'clock this morning I was informed that four men last night were detected leaving the vessel about ten o'clock at night, or about the time the document furnished to me was dispatched. These men were in a waterman's boat, and the water police endeavored to overtake them, but did not succeed in doing so until they arrived at the Sandridge railway station. Well, on examination, we find that those parties were not on board when the ship came into the port, but joined here. [Cheers.] They were persons who ought not to have been allowed to join, and who ought not to have been concealed. [Cheers.] We have now discovered that one of those four persons who left the ship at ten o'clock last night, or about the time the letter was dispatched, was the very man Charley for whom the warrant was issued. [Cheers.] I think the course the government has taken will justify us, not only in the estimation of the house, [cheers,] but I am sure it will be admitted that the government has taken the proper course to carry out and support the intention of the British Parliament in respect to the foreign enlistment act, [cheers,] and the intention of the proclamation of her Majesty with respect to the observance of neutrality. [Cheers.] There is no doubt that this man Charley, for whom the warrant was obtained, and of whom we were assured that he was not on board, was in the uniform of the ship—on various occasions, at all events. [Hear, hear.] Now it appears to me and to the government that if anything can be a violation of strict neutrality, this is it. [Cheers.] My honorable colleague, the minister of justice, reminds me that we have not yet proved that this man Charley wore the uniform of the ship; but we have the statement of various parties that such was the case, and, as they are to be brought before the police court to-morrow morning, I have no doubt but further information will be received on the point. [Cheers.] In the mean time the government have obtained what they really desired to obtain in the first instance, that all parties who joined the ship illegally should be removed from the vessel. [Cheers.] That having been done, we have removed the suspension of leave to her Majesty's subjects to carry out repairs, and to assist the vessel off the slip. [Hear, hear.] Captain Waddell will, of course, be ordered to remove from this port at the very earliest possible date. [Cheers.]

Mr. LEVEY. So far as I gather from the statement of the honorable the chief secretary, the government is not aware even now that all the persons who may have joined the ship here are out of her. [Hear, hear.] Captain Waddell, it seems, denied the authorities the right to search the ship for British subjects who were said to be on board in violation of British laws; and he further denied that the person for whom the warrant

was issued was on board, while, as has been ascertained, the man was on board. I think that the fact of persons having left—persons whose presence on board was denied—affords good reason for believing there are other persons on board. [Hear, hear.]

Mr. McCULLOCH. The particular warrant that was issued for this particular individual has been satisfied; and if further warrants are issued for other persons who may be on board, the position of the government will be altered. It may be that there are other persons on board, but we have no information to that effect. I may state that it is the intention of the government to refer all the particulars of the case to the imperial government, and the various points in the case that have turned up. [Cheers.]

Mr. O'SHANASSY. This is an important and somewhat novel case for us. The honorable the chief secretary states that the government issued a warrant for the apprehension of a particular person, and on the strength of that warrant it was sought to establish a right of search.

Mr. McCULLOCH. The government had not issued the warrant. The warrant was issued by a police magistrate at Williamstown, on sworn information. Neither was there any right of search claimed by the government, though Captain Waddell laid great stress upon that. Now, it was nothing of the kind. The warrant was simply for the apprehension of one of our own subjects who had committed a breach of our own laws. [Cheers.]

Mr. BERRY. It appears to me that the captain of this vessel took advantage of the privileges of a neutral port, and how was the government to see that the neutrality of the port was observed, as it was their duty to do, if the police were not allowed to execute a warrant, not against the ship or the captain of the ship, but against a British subject? [Hear, hear.] As to the question of the right of search set up by the captain, it has nothing to do with the case, and seems to me to be a mere subterfuge. [Cheers.] It is the duty of the government to see that this vessel strictly observes the neutrality proclamation, even though they should have to go on board against the will of the captain or any of his officers? For anything that can be known to the government, unless an examination is allowed, it might be that this vessel is now being fitted up both so as to increase her speed and render her more efficient for war purposes. Now, I again ask, can that be ascertained without an examination? It may be that at the very last moment it will become the duty of the government to stop the vessel. [Hear, hear.] If the government cannot do so, then this neutrality proclamation simply affords additional facility for the vessel of a belligerent power entering a neutral port to be better equipped for war purposes.

The matter then dropped.

[From the Herald of February 17, 1865.]

THE SHENANDOAH RECRUITS.

At the Williamstown police court yesterday, four men, named James Davidson, *alias* Charley, Arthur Wamsley, William Mackenzie, and Franklin Glover, were brought up before Mr. Call, P. M., Mr. Hackett, P. M., and Mr. Mason, J. P., charged with a breach of the foreign enlistment act. The information in each case stated, "That being a natural-born subject of the Queen, you did unlawfully, knowingly, and without the leave or license of her said Majesty for that purpose had and obtained under the sign manual of her Majesty, or signified by order in council, or by proclamation of her Majesty, enter yourself and agree to enlist and enter yourself, to serve as a sailor, and to be employed and serve in and on board a certain vessel of war, fitted out, used, equipped, and intended to be used for warlike purposes in the service of a certain foreign power, province, or people, or part of a foreign power or people, exercising and assuming to exercise the powers of government, to wit, the Confederate States of America."

The prisoners were thus described: Davidson as a native of Scotland, aged 22; Wamsley as an Englishman, aged 17; Mackenzie as an Englishman, aged 22; and Glover as an American, aged 24.

Mr. McDONNELL, instructed by a clerk from the Crown law offices, appeared for the prosecution. The prisoners were undefended.

Mr. McDONNELL asked for an adjournment, as he had only just been instructed, either for two hours or until the next day.

The prisoners, however, said they were ready to go on.

The bench, therefore, thought it would be unfair to keep them in custody any longer than was necessary.

Eventually the case was adjourned for an hour.

On the court resuming, Mr. McDONNELL said that the proceedings were instituted under act 59 George III, cap. 69, commonly known as the foreign enlistment act. He would prove that the prisoners went on board the Shenandoah in these waters, and within the jurisdiction of this colony, for the purpose of entering into the service of a

belligerent state, with which this country was not at war. He would further prove that they were British-born subjects; that they were on board; that they were seen to get over the side of the vessel into a boat, come ashore, and that on reaching the shore they were apprehended; and further matters, in the way of conversation that then took place between them and the police who apprehended them. That would be sufficient to satisfy the requirements of the statute. A case was decided in the exchequer chambers at home in which the law was fully gone into, and although that was for equipping a vessel for war, the same act applied. The case was known as the *Alexandra* case. The point submitted for the adjudication of that court did not arise directly in the present instance, but the principle did incidentally. He was then proceeding to call evidence, when

Mr. CALL asked whether it was proposed to make it a joint prosecution, and mentioned that in a superior court an indictment could not be filed against all together.

After some discussion, Mr. McDonnell elected to proceed first against Davidson, *alias* Charley. The others were then removed, and the following evidence called:

RICHARD WARDLE, watch-house keeper, said that on the 14th instant the prisoner was brought to the lock-up in company with three others. He gave the name of James Davidson, and said he was a native of Scotland. (The witness then read the entry which showed the prisoner was brought in at ten minutes past ten o'clock at night; that he was a Protestant, and that he could read and write.)

JOHN WILLIAMS deposed: I belong to the United States of America. I was taken from the bark *De Godfrey*, on which I was employed, by the *Shenandoah*, on the 7th November, 1864. I entered on board the *Shenandoah* in the capacity of cook. (The witness was here asked as to the circumstances under which he joined the *Shenandoah*, but the bench ruled that it was unnecessary and also unadvisable to try and turn the proceedings into a sensation trial.) I arrived here on the 23d January. I know the prisoner; he gave his name as Charles. He came on-board two days after we arrived. He was employed as assistant cook to the wardroom officers. When he came on board he had on the clothes he now wears. While on board he wore the confederate uniform. I had a conversation with him while he was on board. I asked him where he belonged to. He said London. I asked him what ship he came by, and he said the *Great Britain*. He said he would like to ship on board the *Shenandoah*, and while we were talking, Sailing Master Bullock came into the galley where prisoner and I were. That was about a week after the prisoner came on board. Mr. Bullock asked prisoner what he wanted in the ship. He told him that he came to join the ship. Mr. Bullock told him to keep out of sight while the visitors were on board.

To Mr. Call: At that time the prisoner had on the ship's uniform.

To Mr. McDonnell: When told to go out of sight, the prisoner went into the forecabin. Mr. Bullock told the master-at-arms to lock the forecabin door, and to allow no visitors in. The prisoner at that time was in the forecabin. I left the vessel on the 5th February. The prisoner was on board then.

To Mr. Call: Prisoner at that time was cooking. When the visitors went ashore he came out, and in the morning when they began to arrive he went into the forecabin again. He was let out at night to get his hammock on the berth deck. He slept next me. I cooked the "grub" for him, and sometimes took it to him myself. At meal times the master-at-arms unlocked the door, passed the "grub" in, and then relocked the door.

To Mr. McDonnell: The prisoner got his uniform from Griffiths, a seaman. While on board the first lieutenant also spoke to the prisoner on several occasions. The prisoner wore his uniform when Lieutenant Whittle spoke to him, and was in the galley cooking.

To Mr. Call: The lieutenant told him he dare not ship him while in port, but ordered him to keep out of sight, and said he would ship him when out of port.

PRISONER. Did I ever tell you my name?

WITNESS. Yes, you did.

PRISONER. When?

WITNESS. I called you Bill when in the galley, and you said, "My name is not Bill, it is Charley."

PRISONER. Think again. You are mistaken.

WITNESS. You asked me for a razor to shave with, and I gave you one.

To Mr. Call: It was on the second day when the prisoner asked for a razor. Before that he had full whiskers. (The prisoner appeared in court with simply a moustache and chin tuft.) He said he wanted to disguise himself so that people would not know him. He then shaved himself as he now appears.

WALTER J. MADDEN. I am a native of Boston. I was a seaman on board the bark *De Godfrey*. I was taken out of her on the 7th November, 1864, by the *Shenandoah*. I went from the *De Godfrey* and entered the *Shenandoah* as a seaman. After going on board I was rated as master of the hold. We arrived here on the 25th January.

To Mr. Call: This is the first port we touched at since I joined the *Shenandoah*.

To Mr. McDonnell: I know the prisoner. He first came on board a day or two after

we arrived here. He worked in the galley, and he had on the ship's uniform. I had some conversation with the prisoner. I asked him what he was doing on board, and he said he came to join her if he could. Visitors were on board while I was there, and the prisoner was in the forecabin while they were there. The forecabin was locked while he was there by the master-at-arms. He got his dinner in the forecabin at twelve o'clock. Dinner used to be passed in to him in the forecabin. It was passed in by the cook's mess-boy. I never saw Williams pass it in, but I have seen Quartermaster Wiggins do so.

To Mr. Call: It was passed in through the cable hole, which was large enough for a man to get through. There was a door to that hole which was not locked, although it could have been. It was kept shut.

To Mr. McDonnell: While visitors were on board the prisoner was locked up in the forecabin; after they left he used to come out in the evenings. We used to call him "Charley" on board. He slept in the fore hatch, and I slept aft. I left the vessel on the 6th; I think a week last Monday. When I left the vessel Charley was then on board. He usually wore the uniform "panta." He wore them all the time he was on board. I have seen him wear the uniform cap sometimes.

To Mr. Hackett: It was a gray cap, with two red and one white stripes round it.

To Mr. McDonnell: I have seen the petty officers speaking to him, and he then had on the uniform. One was chief boatswain's mate, and another the master-at-arms. I saw them speak to him every evening. I was not present when any order was given to the prisoner by the officers. His general work was cooking in the galley.

The prisoner said he did not wish to ask any questions.

WITNESS (to Mr. Call): There had been many workmen about the vessel, but none of them slept on board for the night. We had no hired labor for the galley. While the prisoner was in the forecabin, which was ordinarily used as a storeroom, there were other persons there besides those who had come in with the ship. The prisoner is the man concerning whom I laid an information the other day. The muster was twice called over while we were in port, and while I was on board, by the chief lieutenant, at about nine or ten o'clock in the morning. Every one who was on the ship's articles was mustered. The boatswain sung out, "All hands to quarters." The men were mustered by their numbers at the guns. The carpenters and others were not called over; excepting for men at the guns, no roll was taken. The second lieutenant and the quartermaster went round to see after the others. On the first Sunday in every month all hands were mustered and the laws read out.

To Mr. Hackett: I do not belong to the ship now. I have come ashore, [laughter,] and am not going back.

Mr. McDONNELL wished the witness to explain, but it was considered unnecessary.

CHARLES BINCKER said: I am a native of Germany. I was taken from the bark Alina, on which I was a seaman, by the Shenandoah, on the 29th October. We were then at sea. I know the prisoner. I first saw him about twelve days ago, and five or six days after we arrived. I left the vessel last Sunday. From the time when I first saw him, until I left, he continued to be on board. I heard him called Charley.

To Mr. Call: He was acting as cook in the galley.

To Mr. McDonnell: He wore gray clothes; the uniform of the vessel. He wore gray trousers and a gray cap, with two red stripes and a white one in the center. I saw visitors come on board; while they were there Charley was in the forecabin. At dinner-time he was in the forecabin; he used to get his dinner there. He was locked up in the forecabin. He got his dinner from the mess cook's boy. It was passed through the cable hole. I have seen the master-at-arms unlock the door. When the visitors went away, the prisoner went into the galley and was cooking.

To Mr. Call: He got out sometimes through the hole and sometimes he was let out. I have never seen him come out or go in. I have seen the master-at-arms lock the door.

To Mr. McDonnell: He slept in a hammock on the berth-deck.

To Mr. Call: I never saw any of the officers talking to him while I was on board.

HERMAN VECHEER SWORD:

I am a native of Germany. I was on board the Alina with the last witness in October last, and was taken from her by the Shenandoah. I arrived here in the Shenandoah in January last. I know the prisoner. I saw him on board about seven or eight days after we arrived. I left the vessel last Sunday, and until I left I saw him continually on board. He was in the galley as cook. He wore the uniform. I have seen him in the forecabin in the day-time—after breakfast and during the dinner hour. He used to have his breakfast in the forecabin. When visitors were on board he was in the forecabin. After they had gone I used to see him in the galley. He slept between decks in a hammock. I have spoken to him about the Shenandoah, and he told me he had joined her as cook. I have not heard the officers speak or give orders to him.

The prisoner said he did not wish to ask any questions.

WITNESS recalled:

While I was on board I never saw any officer go into the fore-castle to see who was there.

To Mr. Call: The master-at-arms was the officer in charge of the fore-castle.

ALEXANDER MINTO sworn:

I am a senior constable of water police stationed at Williamstown. I was in charge of the police boat on the night of the 14th instant; shortly after 9 o'clock at the patent slip on which the Shenandoah was, I saw a boat haul up to the gangway of the Shenandoah. One of the officers of the Shenandoah was standing at the gangway; he had his uniform on. I saw one of the boatmen, George Nicholls, go on board, and in a short time, a second or two, four men, James Davidson among them, came down to the boat. Another waterman, Clarke, remained in the boat. When I saw the four men go into the boat, I hauled alongside and spoke to them, Charley being present. I asked them who they were, and what they had been doing on board.

To Mr. Call: I think the officer at the gangway could have heard me.

To Mr. McDonnell: They said they had been working at daywork on board. One of them had a bundle in his breast. I heard a call of George from the ship, which I took to be from the officer at the gangway, and immediately I saw Nicholls come and slide down into the boat. The boat then at once pulled ahead. I followed them, but lost sight of them on the water. I returned at once to the patent slip, and ran up to the railway station and saw two of them on the platform. I searched and found the two others in the water-closet. Charley was one of the two that were walking on the railway platform. I went to them and asked them why they hurried away from the ship so quickly. They seemed to hesitate, and then said: "Oh! the Shenandoah you mean." I think it was Charley who said that. They asked what I wanted, and spoke of the train having just started, and I told them there was another. I asked them to accompany me, and they did so. On the way I spoke to all of them. Charley said he was sorry he had to leave her; that he had sold everything he had to join the ship. I asked him what ship he had been in last, and he said he came out from London in the Indemnity. I took them to Mr. Lyttleton, superintendent of police.

The prisoner asked the witness no questions.

THOMAS H. LYTTLETON sworn:

I am a superintendent of police. On the morning of the 14th I went on board the Shenandoah, while she was on the patent slip. I saw Captain Waddell. I believe he is the captain of the vessel. I went on board to ask him to allow me to execute a warrant. (The witness was then asked as to his conversation with Captain Waddell, but the question was ruled to be inadmissible, although it was explained that the object was to prove the nationality. The bench said Mr. Lyttleton's own conclusions could be taken.) I saw a flag on board, which I believe to belong to the Confederate States of America. I had with me the warrant produced, and I told him the purpose for which I went on board, but I was not allowed to effect it. I know the vessel to be commissioned by the Confederate States of America. The warrant was for the arrest of one Charley, but I was not allowed to execute it. I was a quarter of an hour on board. I am able to say she is a Confederate States vessel.

To Mr. Call: I had had a description of Charley, and saw him during that night. I recognized him, and had a conversation with him. He was brought to me by Senior Constable Minto, and I at once said, "I believe you are the very Charley I want." He laughed, and said it was a great joke on board about Charley being wanted. He said he was not the man. He said he was cooking for the wardroom mess, and I said I thought he looked like a cook. I sent him to the lock-up with two constables. He said he had been a few days on board, and that he picked up his meals from among the men. He expressed disappointment at not being able to go.

The prisoner asked the witness no questions.

Mr. McDONNELL stated that that was his case.

The court then adjourned for half an hour, and on resuming—

Mr. McDONNELL asked the bench to give their decision, as otherwise he should not be in a position to proceed with the other cases.

Mr. CALL stated that the bench were prepared to give their decision, and then asked the prisoner the ordinary questions.

The prisoner said that he had never given the name of Charley. The statement was false altogether, and they had perjured themselves who said so.

Mr. CALL, (addressing the prisoner.) The bench are of opinion that you have brought yourself within the act referred to, and have so served on board a vessel fitted out for warlike purposes. You are therefore committed to take your trial at the supreme court. Bail will be allowed, yourself in £50, and one surety in £50, or two in £25 each. He was then removed.

FRANKLIN GLOVER was then placed in the dock.

Mr. McDONNELL said that there was no evidence against him, and that the case would therefore be withdrawn. He was an American.

The bench then ordered his discharge, and he was set at liberty.

WILLIAM MACKENZIE was then brought forward.

When the information was read over to him he stated that he had nothing to say.

JOHN WILLIAMS was then recalled:

He said: I first saw the prisoner on board on 29th of January. He wore citizen clothes—no uniform at all. When visitors were on board he was in the fore-castle; when they left he was out on deck. I never saw any of the officers speaking to him. I never had any conversation with him, and he never spoke to me more than to ask when the ship was going away. I said I did not know. I cooked the grub and sent it to the prisoner by the boy. I saw the fore-castle door unlocked after supper, when the visitors had gone ashore, by the master-at-arms. After it was unlocked I saw the prisoner come out on deck.

The prisoner said the fore-castle door was open all day.

WITNESS, (to the prisoner.) You had been on board for three days without regular rations, when I went to Mr. Grimball, the second lieutenant, and asked what was to be done with you and the others in the fore-castle, and he gave me directions to the master-at-arms to get rations and supply them to you in the fore-castle, the same as the others. I got them cooked and supplied them to you in the fore-castle.

To Mr. McDonnell. The prisoner slept in the berth deck.

The prisoner said he slept in the fore-castle.

WITNESS, (to Mr. Call.) There were about twelve men in the fore-castle who had come from the shore and wanted to join the ship. None of them arrived with the ship.

WALTER J. MADDEN recalled, deposed:

About four or five days after I arrived in the Shenandoah I saw the prisoner on board. He was not engaged in anything. When I left on the 7th February he was then on board. He was in the fore-castle, and his meals were carried in to him. When the visitors had gone he used to come out on deck in the evenings. He used to sleep in the berth deck. He spoke to me with reference to joining the ship. He said he had not been long going to sea, and that he would like to join as ordinary seaman. He said he came on board to join the vessel. I did not hear any orders given by any of the officers to him.

To the prisoner: It was the night she broke adrift that you remarked to me you had not been long going to sea, and that you would like to join as ordinary seaman.

CHARLES BINCKER recalled, deposed:

I first saw the prisoner on board the Shenandoah about five days after we arrived here. He holystoned the deck on Saturday last. He wore his own clothes, and was on board when I left the vessel on Sunday last. He slept in the berth deck and had his meals in the fore-castle, the door at the time being locked. I have seen the master-at-arms open the door while the prisoner was there, as he always was when visitors were on board. I had no conversation with him. I do not know who ordered him to holystone the deck.

HERMAN VECKER recalled, said:

The prisoner came on board about five days after we arrived here. He worked on deck with the holystones. For the first four or five days he was in my mess between decks, and after that he received his meals in the fore-castle, where he was when visitors came on board. I do not know who told him to go to work. I did not have any conversation with him. When he first came on board there were no locks on the doors, but afterward, when more men came, there were two locks. I have seen the quartermaster unlock the door and hand meals in to the prisoner.

The prisoner asked this witness no questions.

ALEXANDER MINTO was then recalled, and deposed to the arrest of the prisoner, in much the same terms as in the previous case. The prisoner said he had lately been in the hospital, and that he had taken six trips in the City of Hobart. He also said, "I am sorry I cannot go in her now; I should like to have gone in her."

RICHARD WARDLE, the watch-house keeper, was then recalled to prove the entry made on the night of the prisoner's arrest, from which it appeared he declared himself an Englishman.

THOMAS H. LYTTLETON, superintendent of police, repeated his former evidence.

That being the case for the Crown, the bench retired to consider their decision.

After a short absence they returned, and the prisoner was asked whether he had anything to say in his defense.

The prisoner said: All I can say is, that I was not aware that I was breaking any law in going to join this vessel. I have been out of a ship for some time, and I thought I might as well try and get some employment as soon as possible.

MR. CALL. I do not think you are mending your case by making such statements.

PRISONER. I have nothing more to say.

MR. CALL, (to Mr. McDonnell.) The supreme court is now sitting; is it contemplated that the case shall now come on during these sittings?

MR. McDONNELL. It is not so intended.

MR. CALL. Then we might commit them to the general sessions, as it would save time and not keep them in custody so long.

Some discussion then ensued as to whether such a course was permitted, and upon reference it appeared that it was not.

The prisoner was then committed to take his trial at the supreme court, the same bail as in the other case being allowed. He was then removed.

ARTHUR WALMSLEY was then brought forward. When the information was read over to him he denied that he went on board the Shenandoah for the purpose of joining her.

MR. SUPERINTENDENT LYTTLETON deposed to having seen the prisoner on the night of the 14th instant; he said he had been on board a few days.

PRISONER. I said I had been on board only one day.

WITNESS, (to the bench.) I cannot recollect exactly what time he said.

Watch-house keeper Wardle was recalled, and read the entry made when the prisoner was locked up, from which it appeared he described himself as an Englishman.

CHARLES BINCKER recalled, deposed:

I first saw the prisoner on board the Shenandoah after we arrived here. He was painting between-decks on Saturday last. He took his meals with No. 2 mess. He was sometimes in the fore-castle and sometimes on deck. He slept in the berth deck. He was on board when I left the vessel. I had no conversation with him. He wore his own clothes.

HERMAN VECKER recalled, deposed:

I first saw the prisoner on board on the 7th February; when I left the vessel on Sunday he was on board. He slept in the berth deck, and had his meals with No 2 mess. I have seen him do work on board. I asked him what he was doing on board the Shenandoah, and he said, "I will join as a seaman before the mast." At that time he had been two days on board.

PRISONER. Look here, sir; if I was going to die this very minute, I never spoke to that man there, and if Fox were here he would prove it. I went on board simply to see Fox, who came from the same town as I did.

WITNESS, (to the bench.) Fox is a quarter gunner.

SENIOR CONSTABLE MINTO then repeated his evidence. The prisoner, when arrested, said he had gone on board on the day before to see a person who had come from the same town as himself.

That concluded the case.

MR. CALL asked the prisoner whether there were any witnesses that he could call, such as persons from Melbourne, who could say that he was on shore and not on board the ship.

The prisoner said that Captain Duncan Graham, of the Potomac lighter, could prove that he was living on board the lighter up to Tuesday morning. There were several other captains of lighters who could prove the same.

MR. CALL then directed the police to obtain the names and addresses of such persons, and to insure their attendance.

The prisoner was then remanded until 11 o'clock on the following day, that the evidence might be produced.

The court then rose.

There was no meeting of the legislative assembly yesterday, owing to a quorum of members not being present.

The four men who were arrested in the attempt to escape from the Confederate States cruiser Shenandoah, on Tuesday night last, were brought up at the Williamstown police court yesterday, charged with infringing the foreign enlistment act by entering or agreeing to enlist themselves in the service of the Confederate States on board that vessel. The court was crowded during the whole day, and considerable interest was manifested in the proceedings. After some discussion it was resolved to take each case

separately, and that of Davidson, *alias* Charley, to search for whom the warrant was issued, was first proceeded with. It was shown by several witnesses, who were, until lately, members of the crew of the Shenandoah, that the man was not seen on board until after the vessel arrived in these waters; that he was employed as cook, except when visitors were on board, during which time he was locked up in the fore-castle; that he had been told by the first lieutenant to keep out of sight until the vessel was out of the port, when he should be enlisted, and that he had spoken to the witnesses of his desire to join the vessel. He was committed for trial at the next criminal sessions, as was also Mackenzie, who, when called on to speak in his own defense, added evidence to that previously given against him. Glover, who, when arrested, declared himself an American, was discharged, it being stated there was no evidence against him. Walmsley, a boy of about seventeen years of age, and against whom the case is somewhat slight, stands remanded until to-day, that he may call evidence to rebut some of the statements made by the witnesses for the prosecution.

The captain of the Shenandoah does not appear desirous of losing any time in taking his departure from this port. The crew were busily engaged during yesterday in taking in coal, and toward evening the sails were being uncovered. It is understood that the vessel will leave to-morrow.

APPENDIX No. XXIII.

DEBATE IN THE HOUSE OF COMMONS OF MARCH 13, 1865, RELATIVE TO THE DEFENSES OF CANADA AND THE RELATIONS BETWEEN GREAT BRITAIN AND THE UNITED STATES.*

[From Hansard's Parliamentary Debates, Vol. 177, pp. 1555-1578, 1609-1611, 1613-1637.]

HOUSE OF COMMONS, *March 13, 1865.*

DEFENSES OF CANADA.

Mr. W. E. FORSTER. Sir, I do not rise in any way to deprecate the discussion which has been raised, and still less do I wish to object to the tone in which the honorable member for Horsham has introduced the subject to the attention of the House. I only wish that the same tone may be generally exhibited in the course of the debate. My reason for troubling the House with any remarks is, that I wish to state how earnestly I desire, when a reply is given, that that reply should be most full and most frank; and that not merely as regards any question of duty we may owe to Canada, or that Canada may owe to us; but as affecting the relations between the United States and Canada, and between the United States and this country through Canada. There are two or three questions raised by the honorable member. One is, how Canada can be best defended from attack. Upon this I shall offer no remarks as it is an engineering question. I can only simply say, that I fear that if what the honorable member wishes us to do is done, and we make Canada defensible throughout the length and breadth of her border against the aggression of her powerful neighbor, the expense will be enormous, beyond what he has any notion of, and I am afraid the honorable gentleman will be handed down to posterity as an imitator, still more extravagant, of those fortifications which will immortalize the noble lord. Then, there is another question. If Canada is to be armed, what is the relative share of the cost to be borne by this country and by Canada? On this subject I shall not trouble the House seeing that the principle is becoming more established every day, that the situation between this country and British America is very much one of an offensive and defensive alliance between two self-governing communities united together by allegiance to one legitimate sovereign. Therefore we have a right to call upon the North American colonies by organization and union to assist in their own defense, and to prove their patriotism by a willing contribution of money and of men. There is, however, another question referred to by the honorable gentleman which has a more immediate interest to all in this House. That question is whether there be any urgent necessity that those two allies should at once enter into arrangements for the defense of Canada against a possible invasion by her powerful neighbor. No one can object to the tone of the honorable member for Horsham; but it is clear that there is such danger as he seems to apprehend? Is there reason to fear that peace between the two sections of the North American States now contending with each other, would mean war by them against this country, with Canada and the ocean for battle-fields? I know that fear does prevail extensively, but I need hardly say that I do not entertain it, as I believe it to be utterly groundless. Still that fear does prevail; it keeps down the funds and affects all the calculations of commerce. A contest between the United States and ourselves would be a disgrace to civilization, and might almost be called one civil war taking the place of another. Though I believe that fear to be utterly unreasonable, and based upon no foundation, certainly men of great eminence and high position—men whom the country looks upon with respect, have done their best, sincerely, without doubt, to excite this fear. I do not say this of the honorable member for Horsham. He could not have expressed that fear in more moderate language or more conciliatory terms than he had done. But this has not been the case with other members of the party to which he belongs. We all know that a statesman who is not only respected by his own party, but by members sitting on this side of the House, has taken occasion to

* Referred to in the following dispatches: Mr. Adams to Mr. Seward, No. 892, March 14, 1865; Mr. Adams to Mr. Seward, No. 893, March 16, 1865. (See Vol. III, p. 520.)

express fears of an immediate war with the United States in a much more urgent manner, and with a much less conciliatory spirit, than the honorable gentleman—the Earl of Derby, in the House of Lords. [“Order”]

Mr. SPEAKER said it would be contrary to order to read a report of a speech made in the House of Lords during the present session.

Mr. W. E. FORSTER. I will only say that the noble earl made a speech somewhere, but I will not say where, and that he took occasion of the dispatch which had been brought forward to-night being laid on the table, to say that he considered that the publication of that dispatch showed very great danger—a danger arising from the hostile feelings of the American people towards this country; and he went on to say he considered that danger arose from symptoms of menace from the United States, and that the danger was great, urgent, and absolutely impending upon us. Well, when eminent statesmen in the position of Lord Derby come forward and express their fears in such language as this, can we wonder that they are felt throughout the country? I thank the honorable gentleman for what he has said to-night, and I hope from its being known that he is in relation with that statesman, that the speech he made to-night will, to some extent, undo the harm in this country and in America which the remarks of the noble lord were so likely to cause. The fact of such a debate as this gives us a right to call upon the government for the fullest explanation. Let them tell us if there are any dispatches or facts of which we are not at present aware, which would warrant the language that had been so used elsewhere. If there are no such dispatches or facts, let them reassure the country. Though I believe this fear to have no foundation, and that this danger is non-existent, I cannot deny that the expression of fear does tend to call the danger into existence. Perhaps I should not say “fear,” for we are a brave and high-spirited people, and fear is not one of our besetting sins. But we are a suspicious people, and when suspicions are aroused, we know that, however unreasonable, they are by their very nature irritating, provocative, and aggressive. We know how it was two or three years ago when we were afflicted with a French panic. I believe there is nobody now who is not ashamed of having believed that the French Emperor would come over like a thief in the night and land an army on our shores. No man looks back on that period who is not ashamed of it. But how near was that suspicion realizing its own fear, and with America the danger is still greater, for the similarity of language between the two countries gives double force to irritating taunts and expressions. Take the remarks which appeared in the most influential journal in this country only last week. In a leading article last week the Times made use of this language: “If the federals can go to war with us with a prospect of success, they will go to war.” I see there are some gentlemen in the House who hold the same opinion; but will they agree with the concluding paragraph of that article, in which a hope is expressed that the present terrible contest will continue to devastate America and to decimate the population, so that the northern people, to whom are imputed hostile intentions against us, may become exhausted? If there be such hostile feelings entertained towards us, it is important to ascertain the fact. True, there have been articles in American newspapers of a hostile character, but articles of a similar tendency toward America have been published in newspapers here. For every attack in the American papers I could get one in this country attacking America; and because of these articles it is to be supposed that we wish to go to war with America? There have been speeches made in the American Congress which I consider to be unwise, but have we had no unwise speeches in the English Parliament? But after all, nations can only be made responsible for the acts of their governments by which they speak. Now, what has the government of the United States done to produce this feeling? I am glad the honorable gentleman acquitted them, but there again he differs from his chief, who said he considered the notice given for the discontinuance of the arrangement with respect to the vessels to be kept on the lakes was without provocation. Now what is the fact in relation to this point? I will refer to the notice given by Mr. Adams of the discontinuance of the arrangement, because the honorable gentleman, no doubt unconsciously, did not fairly represent the effect of that notice. He seems to have an impression that the notice was final, but I do not understand the notice in this way, for Mr. Adams, after referring to the attacks on the steamers in the lakes, and the raid made upon St. Albans, and the necessity of preventing the recurrence of such acts, says:

“I am, therefore, with great regret instructed to give this formal notice to your lordship, that, in conformity with the treaty reservation of the right, at the expiration of six months from the date of this note, the United States will deem themselves at liberty to increase the naval armament upon the lakes, if, in their judgment, the condition of affairs in that quarter shall then require it.”

We all know, however, that a great deal may happen in six months. It is my belief, and, in that belief many persons coincide, that before that time has elapsed it is by no means impossible that the war itself, and with it the very state of things that has led to this notice, may be at an end.

Mr. Adams goes on to say:

“In taking this step I am desirous to assure your lordship that it is resorted to only as

an indispensable measure to the national defense, and so far from being in a spirit of hostility, that it springs from a wish no less earnest than heretofore to preserve the most friendly relations with Great Britain. I take pleasure in adding that it is the fixed purpose of my government in every case to direct its energies to the prevention of all attempts to invade the British territory, whether by way of retaliation or otherwise."

If words express any meaning at all that dispatch conveys the impression that that arrangement is not regarded as a bad one by the American government, but that it is simply thought necessary to depart from it on grounds of self-defense, and that as soon as the causes which have led to the departure had ceased, the desire for its termination would no longer remain. My honorable friend evidently labors under a misapprehension with respect to the reciprocity treaty, because as yet no notice has been given for its termination. Notice has been given of a motion to that effect in the American Congress, and if carried the repeal can only take place at the end of the year. That is a case in which diplomacy may be expected to interfere with effect. There are two parties in America, one of which is interested in the maintenance, and the other in the abrogation of the treaty, and the party who think that their interests are injured by it have unexpectedly an argument given to them by the expression of sympathy in this country and in Canada in favor of the confederates. But when the cause of irritation is removed I believe the feeling to which it has given rise will also depart. My full belief is that the great majority of the American people believe that the treaty in its main principle is of immense advantage to both, that it has led to great prosperity and good feeling between them, but that in reality it is more advantageous to the greater portion of America than to Canada. I have no doubt they will exercise their influence over the government of the United States, and that instead of a repeal, the treaty will only be slightly modified. The honorable gentleman dwelt upon the efforts which the government of America made to fortify their own shores but surely he did not wish it to be supposed that their taking measures of defense was to be construed into an act of hostility, or as imputing an intention of hostility, against this country. Though our government has pursued a strict course of neutrality, attempts have been made to cause them to depart from that neutrality, and in the apprehension that these attempts may be successful surely the American government would not have done their duty if they had not made such preparations for defense as they thought might be required in such an eventuality. Other complaints have been made against the American government. It is said that they have a hostility towards us, and that the claims which have arisen out of the depredations of the Alabama and other ships which have issued from our ports, claims which this country will feel itself bound in honor to refuse, will be made an excuse for war. Now, I wish to ask the government if there is any dispatch which gives grounds to believe that such claims will be enforced in such a manner—whether there is any dispatch effecting the principles of these claims since the dispatch of Mr. Seward to Earl Russell of the 23d of October, 1863? I trust the House will allow me to call attention to the words in which that claim was made. After giving the reasons on which the claim was founded, such as the destruction of property and accusing us of a want of promptitude in our attempts to hinder the departure of these vessels from our shores, Mr. Adams says:

"Upon these principles of law, and these assumptions of fact, resting upon the evidence in the case, I am instructed to say that my government must continue to insist that Great Britain has made itself responsible for the damages which the peaceful, law-abiding citizens of the United States sustained by the depredations of the vessel called the Alabama. In repeating this conclusion, however, it is not to be understood that the United States incline to act dogmatically or in a spirit of litigation. They desire to maintain amity as well as peace. They fully comprehend how unavoidably reciprocal grievances must spring up from the divergence in the policy of the two countries in regard to the present insurrection. They cannot but appreciate the difficulties under which her Majesty's government is laboring from the pressure of interest and combinations of British subjects apparently bent upon compromising, by their unlawful acts, the neutrality which her Majesty has proclaimed and desires to preserve, even to the extent of involving the two nations in the horrors of a maritime war. For these reasons I am instructed to say that they frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question. Though indulging a firm conviction of the correctness of their position in regard to this and other claims, they declare themselves disposed at all times, hereafter as well as now, to consider in the fullest manner all the evidence and the arguments which her Majesty's government may incline to proffer in refutation of it; and, in case of an impossibility to arrive at any common conclusion, I am directed to say there is no fair and equitable form of conventional arbitrament or reference to which they will not be willing to submit."

This dispatch shows that the American government put forward the claim in a con-

ciliatory manner; that they did not put it forward in a peremptory manner, or wish to make it a question of honor between the two countries. The honorable member for Birmingham brought it out the other night that we had a number of claims against the American government. By a parliamentary paper of the 31st of March, 1864, it appears there are four hundred and fifty-one such claims. I dare say the vast majority of these claims are just; but it would be quite unreasonable to say that because we made these claims we would peremptorily enforce them. The United States are likely to act towards us in the same manner. I wish to ask the treasury bench to inform the house whether there is any dispatch from the American government altering the principle on which these claims have been put by Mr. Adams; whether, in fact, any claim has been made since that letter, except one claim on account of the destruction of the Sea Bride by the Alabama, and in that case according to the principle thus laid down? If the conduct of the American government is so different from what it is said to be, why these extraordinary misrepresentations? Why this suspicion of the American government? I do not believe as Lord Derby and as other gentlemen in this House seem to believe, that there is a desire in America for a war with this country. The people in America have a longing for peace; they desire it with eagerness, as any one who mixes with Americans knows, and I cannot believe that, with the debt and the sacrifice and loss of life which war has imposed on them, they will inaugurate peace among themselves by an unprovoked war against a nation that is more powerful than the Southern States, and which would be attended with burdens far greater, and sacrifices much larger, than they now experience, even though their attempt against Canada was in the first instance successful. I attribute the present feeling in this country to two classes of men who have got hold of the British public and misled them. They are, first, the confederate agents and those who sympathize with the South, and, secondly, disappointed prophets. My honorable friend, the member for Horsham, allowed, I think, the first class to get at him. That letter, containing the extraordinary account of the gunboats, came, I think, from a confederate source. [Mr. SEYMOUR FITZGERALD. No.] Many men in this country have been most active as confederate sympathizers. I do not blame them for entertaining strong feelings, and in this, the last gasp of the rebellion, they are straining every nerve to frighten England into taking the only step which is likely to rescue from defeat the cause to which they are devoted. There are men, too, of great literary fame in this country, who must be vexed at the shortcomings of their prophecies, and who, after having foretold from day to day the miserable failure of the federal power, deem it convenient to hide their fallacies, or, at all events, divert attention from their mistakes, by continually urging upon their countrymen that success in the North would only be the herald of a war with this country. These are the men who say that whatever the American government may say or do, we are not to trust to it, because, however friendly the government may be, the people are unfriendly. The question is of such immense importance that I trust the House will allow me to state my reasons for believing that the charge against the American people is as unfounded as the charge against the American government. That charge is based on three ideas, all of which, I believe, rest on fallacies. The first idea is, that the United States—I mean the federal power, the federal people—are greedy of empire and of dominion. The second is, that they are vindictive and eager for revenge; and the third is, that their government is unable to control the people. I believe there is a fallacy in each. I will take the last first. The right honorable gentleman, the member for Horsham, seems to suppose that the American government are unable to control the temporary irritation of the people. Now, there is no government in the world to whom such an inability can be less attributed, because though the American government is a government of the people, it is not therefore the government of a mob; and I challenge any honorable member to produce a case in which the mob of America has controlled the government. There are dangerous mobs in New York, and maybe in one or two other towns of America, but America is not so much responsible for them as England and Ireland, who sent them. But supposing there are mobs in the cities, it does not follow that they have any influence over the American government. The real power over the American government is the great body of farmers throughout the country, who care nothing for the mobs in New York or in any other city in the Union, and there are checks in the forms of the American government which prevent any yielding to temporary irritation, much stronger than any which exist in this country. If there be faults in the American government, and there are very great faults, it is because that government is less liable to be influenced by the temporary feeling of the people than it ought to be. The reason of that is that the Executive is more independent than ours. The President has far greater power in that respect than the prime minister of England; and the fact which seems to us so strange, that the members of the house of legislature sit for months after they are virtually turned out, is an evidence of the checks which are provided by their system against temporary influences. What has happened during the war shows this. If an English ministry had made the failures which have occurred in the conduct of the American armies and of American policy, the English people would not have shown the same long-forbearing patience, but we

should have had change after change of administration. Therefore, the fear that the American government is likely to plunge into war through any temporary irritation on the part of the people is totally unreasonable. It is said, in the second place, that the people are eager for revenge. I do not deny that there are and have been some things done by England which America might feel somewhat bitterly, but these have been the acts of individuals, and not of the government, or of the great body of the people. I am sure that the adherence to their cause of the Lancashire operatives during their great trials has tended to create as good a feeling in America as anything said or done by persons in high stations in this country has tended to create a contrary feeling. For one man in this country who has deluded himself into the belief that this great experiment, the greatest in modern times, is failing, and has boasted with premature joy over the bursting of the bubble, there are at least a hundred who, like the noble lord at the head of the Foreign Office, have hoped from the beginning that the great republic would come out of the struggle unscathed, and rejoice now that it seems likely that she will emerge purified from that slavery which has been her weakness and shame because it has been her sin. I now come to what is more beneath this feeling than almost anything else; namely, the belief that the American people are greedy of dominion. For this the noble earl (Earl Russell) is in some measure responsible, because in one of his speeches he declared that the North was fighting for empire and the South for independence, from which statement the deduction is easy that if the American people fight for empire in the South, they would also fight for empire in the North. I will not say whether the North has been fighting for empire or not, but it certainly has not been conscious of it. The northern people believe that they are fighting to prevent the destruction of their country; and in any attack upon Canada they could not feel that they were fighting in anything but an unprovoked war for empire, and that would be a very different feeling from that which now animates them. Then if there be no such immediate danger, surely we may consider the question of fortifications with coolness and deliberation, and not with the certainty of incurring expenses which may affect the budget not only of this year but of future years. Besides, these fortifications would be of little avail if Canada were attacked. The matter would have to be fought out by our inflicting injuries on the Americans in other quarters. If Canada is to be defended, her best defense will be a perseverance in those principles of neutrality which, through her government and her assembly, she has shown a determination to enforce by preventing these midnight raids upon her neighbors. The best aid we can give to her is for us to take care to hasten the time when the wounds of this terrible war between North and South may be healed over; in the prosperity of that country which will arise from its fruitful soil and boundless resources, freed from slavery; when the jars which the war has caused between America and England shall be forgiven if not forgotten; when all English speaking men, either in these islands or her dependencies, or in the great republic, shall feel themselves so bound together by common interests, by the ties of language, blood, and faith, and common freedom, that war between any of these communities will be as abhorrent and revolting to their inhabitants as a war within their own borders.

Mr. CARDWELL. Sir, the honorable member for Horsham concluded his speech by saying that if ever a disaster overtook us from the want of proper energy and foresight on the part of the government, he should feel the utmost satisfaction from the reflection that he had at least given early notice of the danger. But if such a contingency did ever arise it would be a still more natural source of satisfaction to any person, whether a subject of the Queen or a citizen of the United States, to be able to say that not a syllable had fallen from him which could have the remotest tendency to bring about the great calamity of a war between the two countries. My honorable friend, the member for Bradford, in his eloquent speech, has called on the government to answer two questions. He has asked us to state distinctly whether we cannot truly assure the House that our relations with the United States are, as they have been, perfectly friendly. I can, without reserve, give that assurance to the House. My honorable friend has also asked whether there is not some correspondence unknown to this House, varying the tenor of the demands made on this country for compensation on account of the destruction of American merchantmen. With equal pleasure and confidence I can assure my honorable friend that the answer I have to give is the answer which he desires. There are no papers varying the tenor of the principle on which that question stands between the two governments. The honorable member for Horsham began his speech in a tone of which we can make no complaint. All I will say of it is that it contrasts most advantageously with the tone which has been taken by other persons on the same subject, and I sincerely trust that that tone will always be observed. I should feel deeply reprehensible if I allowed a single syllable to drop from me which would tend to exasperate any difference of opinion or to turn that which might be a matter of passing controversy into a serious subject of dispute. The right honorable gentleman has alluded to the reciprocity treaty, and also to the termination of the agreement of 1817 with regard to the number of vessels on the lakes, and he said he saw no evidence of hostility in the course pursued by the United States on either

of these questions. I have the satisfaction of telling him, with regard to the number of vessels on the lakes, that the noble lord, the foreign secretary, has already communicated to the United States minister his desire that another agreement might be substituted for the one which the government of the United States has given us notice to terminate. With regard to the reciprocity treaty, when notice shall have been given by the United States her Majesty's government will not lose a moment in endeavoring to renew the negotiations on a subject of such importance to both the United States and this country. The honorable gentleman has referred in just terms to the canceling by President Lincoln of the order issued by General Dix, and to the uniform courtesy manifested to this country by the United States minister in London. I cordially agree with him in respect of what he has said of the high character and conduct of Mr. Adams, and I must say that in selecting their representatives in this country the government of the United States have always paid us the compliment of choosing from among their most distinguished citizens. The honorable gentleman, after speaking in this mode in the early part of his speech, then passed with a rapid transition, through which I was unable to follow him, to a consideration of the dangers which he sees in the future. He thinks that after the present civil war is over there is imminent danger of hostilities between the United States and this country. I do not believe that in using the expressions to which I refer the honorable gentleman meant to give his sanction to the demands made by the United States; but I understood him to say of Canada that she had sent out no Alabama, and had not given cause of complaint, as we had done, but I wish, in using expressions of that kind, the right honorable gentleman had been a little more careful. Whatever may be the honorable gentleman's opinion on that point I will admit with him that whatever may be the prospects—and I hope the prospect of relations between the United States and Great Britain is not one in which we are obliged to see hostilities—it is not on the justice or good will of any other country. nor on the forbearance of any other country, we are to calculate for our defense. It is on our own position, on our own inherent strength and means of defense, that we must ever rely.

I cannot express the feelings of regret with which I should regard a controversy between the United States and the subjects of her Majesty. I should look upon it as a fratricidal war—a calamity almost unequaled by anything that the world has ever seen, and I sincerely trust that, however much we may debate among ourselves these questions of the defense of Canada and the mutual relations of our possessions with the mother country, we shall be careful to employ no language calculated to irritate temporary differences, or to exasperate into greater disputes questions which might pass away. Let us continue to believe that those feelings of the educated classes and the government of the United States to which the honorable gentleman alluded—those feelings which we know to be prevalent among the community in which we live are prevalent, not only among the educated classes, but also among the general body of the community in the United States of North America.

Mr. DISRAELI. Sir, I do not think that her Majesty's government, after placing the report of Colonel Jervois upon the table, could have expected that the subject of the defense of Canada would be unnoticed by the House of Commons; and it could not have been brought forward to-night in a manner more distinguished for clearness, moderation, and accuracy, than it has been by my honorable friend. I am sorry that the honorable gentleman opposite (Mr. W. E. Forster) should have considered that that statement favorably contrasted with another expression of opinion which he referred to as having been made in another place. I am myself totally at a loss, speaking, of course, from memory at the moment, to recall to recollection any expression of opinion in another place by the personage to whom he referred which at all justified the criticism of the honorable gentleman. On that occasion, if I remember aright, recalling to the recollection of those whom he addressed the great irritation that occurred at the time of the affair of the Trent, now four years ago, it was naturally argued: "Why have you allowed four years to pass away without making those preparations which you now confess are necessary?" And, sir, that appears to me to be an argument very difficult to meet. With regard to the opinions of that eminent statesman upon the general subject of American affairs, living as I do with him in perfect confidence, and having expressed in this House sentiments in reference to it, I can only say that in those sentiments, he fully and completely shared. I am not myself conscious at this moment of ranking among those mortified and baffled prophets to whom the honorable member (Mr. W. E. Forster) referred; and I can only say that I have expressed no opinion upon American affairs in this House which has not been entirely shared and concurred in by the earl of Derby. Nor do I think that throughout these four years it is possible to produce any expression that has ever fallen from the lips of that eminent man which in any way could justify the observations of the honorable gentleman. Sir, I am not here to-night to impugn—and I have never impugned—the conduct of the government of the United States throughout this struggle. I am prepared to say now, with increased experience of their behavior, it appears to me, as I stated two years ago, that under circumstances of unprecedented difficulty that gov-

ernment has conducted itself with great energy and with great discretion. Nor, sir, am I at all of opinion that we are in any immediate danger, in case the war between the Northern and Southern States terminates, of being placed in collision with the government of the United States from our connection with Canada. Sir, I do not pretend now to express any opinion upon what may be the termination of the present contest; that appears to me to be perfectly unnecessary to the discussion of the subject which is before our consideration to-night. But, assuming even the result to be such as the honorable member for Bradford supposes, I do not myself conclude that the citizens of the United States of the North, if entirely and completely victorious, will feel inclined immediately to enter into another struggle with a power not inferior in determination and resources to the Southern States of America. I have formed that opinion because it appears to me that the people of the United States are a sagacious people. I do not think they are insensible to the glory of dominion and extended empire; I give them full credit for being influenced by the passions which actuate mankind generally, and nations who enjoy a state of great freedom particularly; but being a sagacious people, I do not think they would seize the moment of exhaustion as the one most favorable to the prosecution of an enterprise requiring great resources and immense exertion. Sir, there are other reasons, too, which induce me to adopt that opinion. I have not been influenced in forming a judgment upon such grave matter by that sort of rowdy rhetoric which is expressed in public meetings and public journals, and from which I fear in this country is formed too rapidly our opinion of the character and possible conduct of the American people. I look upon such expressions as something like those strong, fantastic drinks that we hear of as such favorites on the other side of the Atlantic; and I should as soon suppose that this rowdy rhetoric is a symbol of the real character of the American people as that those potatoes are symbols of the aliment and nutrition of their bodies. Sir, there is also another reason which very much influences my opinion that these violent courses which are apprehended will not occur. The democracy of America must not be confounded with the democracies of old Europe. It is not the scum of turbulent cities, nor is it a mere section of an excited middle class speculating in shares and calling it progress. It is a territorial democracy, if I may use that epithet without offending honorable gentlemen opposite. Aristotle, who has taught us most of the wise things we know, never said a wiser thing than that the cultivators of the soil are the class least inclined to sedition and to violent courses. Now, being a territorial democracy, their character has been formed and influenced by the sort of property with which they are connected, and the nature of the pursuits which they follow. There is a sense of responsibility arising from the reality of their position that very much influences their political conduct, and at the present moment, I believe they are much more inclined to welcome the return of laborers to their fields, and, being a very domestic people, again to see assembled around their hearths, to which they have long been accustomed, the household in whose lot they are interested, than to indulge in schemes, plans, and dreams of invading the dependencies of her Majesty. But, sir, although these are my opinions generally upon this immediate point, I cannot conceal from myself the fact that very great changes have taken place in America which must affect the future; and I am inclined to believe that in this House those changes are not rated at sufficient importance. What has happened in America, whatever may be the consequence of the present struggle, does not appear to me to be less than a revolution. I would ask the honorable gentlemen to recall to their recollection what was the state of North America when we met in this House about four years ago. Why North America was then divided among what I may call three great powers. There were the United States of America, the colonies, settlements, and dependencies of our own sovereign, and there was a country which certainly did not possess great political power, but which, in extent of resources, fertility of soil, and mineral treasures, is, perhaps, not equalled in the world—Mexico. Now, North America was divided under these three heads, and in reference to every one of these you will see vast changes have occurred. In the United States civil war has raged, and is still raging; and even if it terminate (I myself give no opinion as to its termination) as the honorable member for Bradford anticipates, I cannot myself believe that you will see the same society and form of government re-established—certainly not in spirit though you may in form—as existed before the civil war commenced; because we must remember this, that even if the federal government is triumphant it will now have to deal with a perplexing and discontented population. I will not dwell much upon the population that will then represent the southern communities; but look to the slave population, no longer slaves. There will be seven millions of another race emancipated; legally in full enjoyment of the rights of freemen; so far as the letter of the law is concerned, placed upon an equality with the Saxon race, with whom they can possibly have no sympathy. But whatever may be the letter of the law, we know from experience that in practice there will be a difference—a marked difference—between those recently emancipated, and, I will not call it the superior race, because I may offend some gentlemen opposite, but a race which is certainly not identical. Well, nothing tends more to the discontent of a people than that they should be in possession of privileges and rights which really and practically they find are not recognized, and

which they do not enjoy. These are elements of political discontent; and therefore if the United States be triumphant, they will have to deal with what they had not before—great masses of discontented population. For such a condition of affairs you must have a strong government. But what does a strong government mean? It means a central government; and the United States of late, in their troubles and emergencies have had recourse to the centralizing principle. A central government must have an army at command for the purpose of maintaining that order and unity which it is their duty to uphold. Well, sir, I think these are elements which will produce a very great difference in the condition of the United States, even if they come triumphant out of this struggle. What is the condition of the colonies, settlements, and dependencies of her Majesty? Before this struggle, four years ago, there was very little common sympathy among them. The tie to this country was almost one of formality, and yet what has been the consequence of this great change in North America? There has already developed a formidable confederation, with the element of nationality strongly evinced in it. They have counted their population; they feel that they are numbered by millions; they are conscious that they have among the possessions of the Queen in North America a district of territory which in fertility and extent is equal to the unappropriated reserves of the United States. These are elements of power, and prognostics of new influences which will very much change the character of that country. Nor is there any reason to suppose that they are less influenced by the ambition natural to free communities than the United States themselves. Perhaps they may foresee that they may become the Russia, I will say for example, of the New World. But what is the condition of Mexico? Before this civil war commenced, Mexico was a republic, with a very weak government. She is no longer a republic, but an empire, and she has become an empire by the interposition of two of the most powerful and ancient states of Europe—France and Germany. Well, sir, when we see all these immense changes, it is impossible to deny that in North America a great revolution is occurring; and when these struggles are over, when peace again appears, and when tranquillity in all these departments may be again established, you will find communities governed by very different influences, and aiming at very different objects from what they have hitherto avowed and recognized. Sir, I have often heard in this House statesmen, even distinguished statesmen, mumbling over what they call the balance of power in Europe. It appeared to me always to be a great mistake, when we consider the distribution of power to confine our consideration to merely European elements; that the time must come, and speedily come, when we should find that other influences from other quarters of the globe would very much interfere with all those calculations, which now are become obsolete. Well, sir, I think this war in America has rapidly precipitated the recognition of a new definition of the balance of power, not as a system of small and great states, leaving all the strongest positions in the hands of the weakest; but on the contrary that the proper meaning of the balance of power is security for communities in general against the predominance of one particular power. I think, when you have to consider the balance of power in future, you will have to take into consideration states and influences which cannot be counted among European powers. Sir, it is impossible, notwithstanding what honorable gentlemen may say with regard to the character of the United States, to conceal from ourselves that there is a feeling among those influential land-owners to whom the honorable member for Bradford has referred with reference to Europe which is of a peculiar nature. I will not say, for example, that the United States look to old Europe with feelings of jealousy and vindictiveness, because words of that kind should not unnecessarily be used with respect to the relations between nations; but it is certainly undeniable that the United States look to old Europe with a want of sympathy. They have no sympathy with countries which have been created, and which are sustained, by tradition. The only part of old Europe they do sympathize with is that part which is new, and that you will invariably observe in their course of conduct. If, then, I am at all justified in this view, it is quite clear that we must make up our minds to know what our relations really shall be with her Majesty's dependencies on the other side of the Atlantic. We are on the eve, no doubt—I do not mean to-morrow or next year—but taking those large views which become the House of Commons, we may be soon upon the eve of events in which our relations with our American dependencies must be clearly apprehended and acted upon by this country. Is this country prepared to renounce our American colonies, or to maintain the tie? Sir, I am perfectly willing to admit that if they express a wish to sever that connection; if those views were well-founded which have often been mentioned in this House, that they prefer to be absorbed by the United States, as we heard years ago, then we may terminate that connection with dignity and without disaster; but if, on the other hand, those views which are now more generally accepted are just—if there be on the part of Canada and the other North American colonies a sincere and deep desire to form a considerable state, to develop their resources with the patronage and aid of England until that mature hour arrives when we may lose perhaps our dependencies, but gain permanent allies—then, I say, it would be one of the greatest political blunders conceivable for us in any way to renounce, relin-

quish, or avoid the responsibility of upholding and maintaining their interests at the present moment. I am sure, sir, if, from any consideration of expense, the position which we now occupy in North America were relinquished, it would ultimately be, as regards the resources of our wealth, as fatal and disastrous a step as a nation could take—that our abject prosperity would not long be a consolation for us, and that we should then indeed have to prepare perhaps for the invasion of our country and the subjugation of our people. I infer from what has been stated that honorable gentlemen below the gangway do not themselves uphold those views which I regret have been expressed in other places, in other quarters; that they adopt what I hope is the sound and truly patriotic view of the subject; not to force our connection upon any dependency, but if at a moment like the present—a moment of revolution in North America—we find English colonies asserting the principle of their nationality, foreseeing, perhaps, a glorious future, but still depending till the moment of their entire emancipation arrives upon the faithful and affectionate assistance of the metropolis, it would be the most short-sighted, as it would be the most spiritless conduct in the eyes of the world, to shrink from the duty which Providence has assigned to us to fulfill. Well, sir, under these circumstances, what is the course we ought to adopt? I cannot doubt that the course we should pursue is to assist in placing our North American Provinces in a state of proper defense. When we are told it is impossible to defend a frontier of one thousand five hundred miles, I ask who has ever requested you to defend such a frontier? What we recommend and require is, that her Majesty's troops in Canada should not be placed in a position in which the utmost bravery and skill would be of no avail, but that they should defend the country according to the military conditions upon which all countries are defended. You do not defend hundreds of miles of frontier. Austria has an immense frontier, but Austria does not defend it all. She takes care that when she is invaded there shall be forts round which her troops can rally for her defense. That is all we wish to see. We wish to see Canada placed in such a condition, that if defended by her own countrymen, assisted by her Majesty's troops, they should at least have that fair play which troops have a right to count upon, and the advantage of those fortifications which, if devised with sufficient skill, double the strength of armies, and tend to the success of campaigns. That is what is required, and what I trust her Majesty's government have resolved to give. I confess that these four years need not have been lost. I do not think that, from the first, affairs in America have been considered of the importance to which they have attained, and which, indeed, I myself always felt they must attain. My complaint against the government is that, from the first, they did not adequately estimate the affairs of America. I formed that opinion from the judgment expressed upon them by her Majesty's government during the last four important years. Their opinions, formed upon the nature of the struggle in America, upon its possible consequences, and upon the general results which it would bring about, are for the most part inconsistent. One day we have been told by an eminent member of the government that the South might be said to have completed their independence, and very shortly after that a very great authority, lost now to this House, (and whose loss no one more regrets than I do—Sir George Lewis,) said he did not recognize that any single element of independence had been accomplished by the South. These two opinions perplexed the country. One day we were led to believe, by the highest authority of the government, that there was on the part of the government the utmost sympathy for those who were struggling on behalf of the Southern States; while, on the other hand, the minister who had peculiarly to pass judgment on these matters, and whose official position gave weight to his opinions, expressed conclusions of a totally different character. I do not care to blame her Majesty's government for these inconsistencies of opinion in a position of extreme difficulty, and in a period of revolution; but what I regret is the consequence of these discordant opinions on their part, and that all this time the colonies of this country have not been prepared for defense as they should have been. After the loss of four years we are now about to commence an effort on a small scale, but this, after all, is a small matter, provided we now act on sound principles. If the Parliament of England has determined to maintain the colonies of her Majesty, founded upon the unequivocal expression on their part that to that connection they cling with feelings and sentiments of a character which show that the national feeling is wholly unimpaired; if they show that the reports and rumors which have been circulated with regard to the feelings of the colonies are unfounded; that they are proud of their connection with this country; and that they are resolved to maintain it until they rival us in our great career, and have become our allies and our friends, then I should not regret anything which has been done. It appears there are two consequences which have resulted from public opinion being of late agitated upon these topics: that we are conscious now of what our duty to the colonies is, and that we are prepared to fulfill that duty in a manner which will produce confidence, and strengthen and maintain the British empire.

Mr. AYRTON said. * * * * * After all it seemed to him that the best way of protecting Canada was to preserve proper relations with the United States.

If we were prepared to break those relations upon the slightest ground, any speculation on the defense of Canada would be of no avail. The claims made by the American government, and referred to by the honorable member for Bradford, might, according to the suggestion of Mr. Adams, be submitted to arbitration; at all events, he interpreted the dispatch from that gentleman as containing such a suggestion. Having heard a good deal about arbitration being one of the chief principles adopted by her Majesty's government, he must confess that he had read with intense surprise the answer sent by Earl Russell to the temperate and legitimate dispatch of the United States government. It was not for us to consider whether the claims made by the United States were founded on justice and right. It was sufficient for our purpose that we possessed the knowledge that a great power solemnly asserted its belief in the justice of those claims according to the principles of international law and of justice. He held it was the bounden duty of our government to enter into the negotiation, and fall in with the proposal as far as practicable. What, however, was the course adopted by Earl Russell? He wrote a dispatch which to his (Mr. Ayrton's) mind was most unsatisfactory, and it could not be denied that the publication of that dispatch had caused great dissatisfaction in the United States. The fact was, that the disregard of the demands of the American government was the real latent cause of the growing irritation in the minds of the American people. He thought that some further explanation was due to the House than had been offered by the right honorable gentlemen to the question of the honorable member for Bradford. The answer of the secretary for the colonies substantially was that the question remained in the same state as when that document was written. But that state was one of irritation and annoyance on the part of the United States. The honorable member for Bradford must have expected some better answer—something to soften down that feeling of irritation. Had any steps been taken to meet the demands of the United States government? It was obvious that those demands would be repeated, and must be repeated if the United States government had any regard for its own honor, and then what would be the position of this country? We had a demand preferred by the United States when in difficulties, accompanied by a suggestion of a reference to arbitration. That demand we had flung aside, but it would be repeated when the United States were as strong as they hoped to be. What would then be our position? We must do precisely that which we refused to do now. We must do that or go to war; and where was the man who would stand up and say we ought to go to war after such a demand from the United States? Would it not be better for the country to look the question fairly in the face now; that the government should again take the subject into its consideration, and endeavor to put it into a train for adjustment? Instead of that they came down with demands for fortifications and works of a defensive character. He thought the government had better withdraw the vote altogether, at least they ought to furnish the House with the necessary information for forming a judgment upon it. But he would prefer to hear from them that our relations with the United States were such as to induce a reasonable hope that they might be able to neutralize the great lakes and to render unnecessary the further prosecution of hostile discussions.

LORD ROBERT CECIL. Sir, I have no doubt great advantages have arisen in recent times from the practice which has grown up of reporting to the public outside, the debates which pass in this House; but, on the other hand, it is impossible to listen to such a debate as this without feeling that the practice has its drawbacks too. One speaker after another has got up and protested that he has not the faintest idea of any possible danger of a rupture with the United States; but one cannot but feel that there is something contradictory in the very existence of this debate and the statement which has been so ostentatiously brought forward—a contradiction not altogether flattering to our confidence in our own strength, or calculated to increase in the minds of the rest of the world a favorable opinion of it. We value Gibraltar, but we are not always discerning how we will defend Gibraltar from Spain. We value Malta, but we are not always discerning how we will defend Malta from Italy. We are now discussing how we shall defend Canada, for one reason and no other—that there is a power which can attack Canada, and which has the will to do so. I have heard from the honorable and learned gentleman who has just sat down (Mr. Ayrton) opinions which make me feel with greater force the drawback of having our debates reported to the public out of doors. The honorable and learned gentleman has expressed in the broadest and strongest language his opinion that it is of little use for us to defend Canada, unless we can contrive to make peace with the United States. I concur with him that, if we do so, it will be unnecessary for us to defend Canada. I was sorry to hear the observations which he made respecting the Alabama—observations similar to those which have been made elsewhere in the course of debate, and which may be misrepresented on the other side of the water—observations which entirely misrepresent the spirit and feelings of this House, and the policy which England is likely to pursue. I am sure that England will never consent to submit to the excessive and extravagant demands which the minister of the United States made in this respect, contrary, as has been repeatedly proved, to the principles of international law. I wish to protest, also, against the exaggerated appli-

cation of the principle of arbitration. Arbitration is very well as to facts. If there is a dispute as to facts, it is desirable to submit them to arbitration; but where the dispute is not as to facts, but as to great principles of international law, to submit them to arbitration is to hand over to the arbitrator the power of selecting or establishing that view of the principles of international law to which you must adhere in all future time. Now, I do not think that international law can be framed on such principles, and I believe that if any attempt were made to do so the parties who appeared before the arbitrator would not submit to be bound by his decision.

Mr. BRIGHT: Sir, I am not sure that I should have addressed the House on this occasion but for the observations which have been made by the noble lord. I think he has been perhaps a little more frank in his declarations on this occasion, and in pointing out the real thing which I suspect is passing in his mind and in the minds of very many members of the House who have made no statement of their own opinions during this debate. I hope the debate will be useful, although I am obliged to say, while I admit the importance of the question that has been brought before us, that I think it is one of some delicacy. That it is important is clear, because it refers to the possibility of war between this country and the United States, and its delicacy arises from this, that it is very difficult to discuss this question without saying things which tend rather in the direction of war than in the direction of peace. The difficulty that is now before us is this: that there is an extensive colony or dependency of this country lying adjacent to the United States, and if there be a war party in the United States, a party hostile to this country, that circumstance affords to it a very strong temptation to enter without much hesitation into a war with England, because it may feel that through Canada it can inflict a great humiliation upon this country. And at the same time it is perfectly well known to all intelligent men, especially, to the statesmen and public men of the United States; it is as well known to them as it is to us, that there is no power whatever in this United Kingdom to defend successfully the Territory of Canada against the power of the United States. Now, we ought to know that in order to put ourselves right upon this question, and that we may not talk folly and be called upon hereafter to act folly. Now, the noble lord at the head of the government, or his government at any rate, is responsible for having compelled this discussion; because if a vote is to be asked for this session and it is only the beginning of other votes, it is clearly the duty of the House to bring the subject under discussion. I think the vote now is particularly inopportune for many reasons, but especially as we have heard from the Governor General of Canada, that they are about, in the North American Provinces, to call into existence a new nationality; and I, for one, shall certainly object to the taxes of this country being heedlessly expended in behalf of any nationality but our own. Now what I should like to ask the House is this: first of all, will Canada attack the United States? Clearly, not. Next, will the States attack Canada? I am keeping out of view England altogether. Clearly, not. There is not a man in the United States, probably, whose voice or whose opinion would have the smallest influence in that country, who would recommend or desire that an attack should be made by the United States upon Canada with a view to its forcible annexation to the Union. There have been lately, as we know, dangers on the frontier. The Canadian people have been no wiser than some members of this House, or than a great many men amongst the richer classes of this country. And when the refugees from the South—I am not speaking now of respectable and honorable men from the South—many of whom have left that country during these troubles, and for whom I feel the greatest commiseration, but I mean the ruffians from the South who in large numbers have entered Canada and have employed themselves there in a course of policy likely to embroil us with the United States—I say that the people of Canada have treated these men with far too much consideration. They expressed very openly opinions hostile to the United States, whose power lay close to them. I will not go into a detail of what we are all sufficiently well acquainted with, the seizing of American ships on the lakes, the raid into the State of Vermont, the robbing of a bank, the killing of a man in his own shop, the stealing of horses in open day, and another transaction of which we have very strong proof, that men of this class actually conspired to set fire to the largest cities of the Union. All these things have taken place, and the Canadian government made scarcely any sign. I believe that an application was made to the noble lord at the head of the Foreign Office nearly a year ago, that he should stimulate the Canadian government to some steps to avoid the dangers that have since arisen; but with that sort of negligence which has been so much seen here, nothing was done until the American government and people, aroused by the nature of these transactions, showed that they were no longer about to put up with them. Then the Canadian government and people took little notice. Now, Lord Monck, the Governor-General of Canada, about whose appointment I have heard a great many people to complain, saying that he was a mere follower of the noble lord at the head of the government who lost his election and was, therefore, sent out to govern a province—I am bound, however, to say, from all I have heard from Canada, that Lord Monck has conducted himself in a manner very serviceable to the colony, and with the greatest possible propriety, as representing the sovereign there—Lord Monck has been all along favorable to

the United States, and I believe his cabinet has also. I know that at least the most important newspaper there, has always been favorable to the North. Still nothing was done; but the moment these troubles arose, then everything was done. Volunteers had been sent to the frontier. The trial of the raiders has been proceeded with, and possibly they will be surrendered; and the Canadian chancellor of the exchequer has proposed a vote in their House of Parliament to restore to the persons of St. Albans, who were robbed by the raiders, the \$50,000 that were taken from them. And what is the state of things now? There is the greatest possible calm on the frontier. The United States have not a word to say against Canada. The Canadian people have found that they were wrong, and have now returned to their right mind. There is not a man in Canada, at this moment, I believe, who has any kind of idea that the United States government has the smallest notion of attacking them, now or at any future time, on account of anything that has transpired between the United States and Canada during these trials. Well, now, if there comes a war in which Canada shall suffer and be made a victim, it will be a war got up between the government of Washington and the government in London. And it becomes us to inquire whether that is at all probable. Is there anybody in this House in favor of such a war? I notice with general delight, and I was not a false prophet when I said sometime ago, that some day it would be so—I say, I notice with delight the changed tone taken here with regard to these American questions. Even the noble lord the member for Stamford, (Lord Robert Cecil,) can speak without anger, and without any of that ill-feeling which I am sorry to say on past occasions he has manifested in discussing these questions. Now, I believe, there is no man out of Bedlam, or at least who ought to be out of it, and I suspect there are very few men in Bedlam, who are in favor of our going to war with the United States. And in taking this view I am not arguing that it is because we see the vast naval and military power and the apparently inexhaustible resources of that country. I will not assume that you or my countrymen have come to the conclusion that it is better for us not to make war with America, because you will find her with a strength that you did not even suspect; I will say that it is upon higher grounds that we are all against a war with the United States. Why, our history for the last two hundred years, and further back, is a record of calamitous, and, for the most part, unnecessary wars. We have had enough of whatever a nation can gain by military successes and military glory. I will not turn to the disasters that might follow to our commerce, nor to the wide-spread ruin that might be occasioned. I will say that we are a wiser and better people than we were in these respects, and that we should regard a war with the United States as even a greater crime, if needlessly entered into, than war with almost any other country in the world. Looking at our government we have preserved, with a good many blunders, one or two of which I shall comment upon by and by, neutrality during this great struggle. We have had it stated in this House, and we have had a motion in this House, that the blockade was ineffective and ought to be broken. Men of various classes, parties, agents of the Richmond conspiracy, persons, it is said, of influence from France, all these are reported to have brought their influence to bear on the noble lord at the head of the government and his colleagues, with a view of inducing them to take part in this quarrel, and all this has failed to break our neutrality. Therefore, I should say, we may clearly come to the conclusion that England is not in favor of war; and if there should be any act of war, or any aggression whatever, out of which Canada will suffer, I believe honestly it will not come from this country. That is a matter which gives me great satisfaction, and I believe the House will agree with me that I am not misstating the case. Now let us ask, is the United States for war? I know the noble lord the member for Stamford, (Lord Robert Cecil,) has a lurking idea that there is some danger from that quarter; I am not at all certain that it does not prevail in other minds, and in many minds not so acute as that with which the noble lord is gifted. If we had at the bar of the House Lord Russell as representing the English government, and Mr. Adams as the representative of the government of President Lincoln, and if we were to ask their opinion, they would tell us the same as the secretary of the colonies has this night told us, that the relations between the two countries, so far as it is possible to discover them, are perfectly amicable; and I know from the communications between the minister of the United States and our minister for foreign affairs that they have been growing more and more amicable for many months past. Now, I take the liberty of expressing this opinion, that there has never been an administration in the United States since the time of the revolutionary war, up to this hour, more entirely favorable to peace with all foreign countries and more especially favorable to peace with England, than the government of which President Lincoln is the head. I will undertake to say that the most exact investigator of what has taken place will not be able to point to a single word he (President Lincoln) has said, or a single line he has written, or a single act he has done, since his first accession to power, that betrays anger against this country, or pain of any kind, or any of that feeling which some persons here fancy occupies the breast of the President and his cabinet. Then if Canada is not for war, if England is not for war, and if the United States are not for war, whence is the war to come? This is what I should like to ask. I

wish the noble lord, the member for Stamford, had been a little more frank. I should like to ask, whence comes the anxiety which undoubtedly to some extent prevails? It may be assumed, even, that the government is not wholly free from it; but they have shown it in an almost ludicrous manner by proposing a vote of £50,000. It is said the newspapers have got into a sort of panic. They could do that any night between the hours of 6 and 12 o'clock, when they write their articles. They are either very courageous or very panic-stricken. It is said that "the city" joins in this feeling. We know what "the city" means; the right honorable gentleman alluded to it to-night. It means that the people who deal in shares, though that does not describe the whole of them, "the monied interest" of the city are alarmed. Well, I never knew "the city" to be right. Men who are deep in great monetary transactions, and who are steeped to the lips sometimes in perilous speculations, are not able to take broad and dispassionate views of political questions of this nature. As to the newspapers, I agree with my honorable friend the member for Bradford, (Mr. W. E. Forster,) when, referring to one of them in particular, he intimated that he thought its course was indicated by a wish to cover its own confusion. Surely, after four years' uninterrupted publication of lies with regard to America, I should think it has done pretty much to destroy its influence on foreign questions forever. But there is a much higher authority—that is the authority of the peers. I do not know why we should be so much restricted with regard to the House of Lords in this House. I think I have observed that in their place they are not so squeamish as to what they say about us. It appeared to me that in this debate the right honorable gentleman (Mr. Disraeli) felt it necessary to get up and endeavor to excuse his chief. Now, if I were to give advice to the honorable gentleman opposite, it would be this—for while stating that during the last four years many noble lords in the other House have said foolish things, I think I should be uncandid if I did not say that you also have said foolish things—Learn from the example set you by the right honorable gentleman. He, with a thoughtfulness and statesmanship which you do not all acknowledge—he did not say a word from that bench likely to create difficulty with the United States. I think his chief and his followers might learn something from his example. But I have discovered one reason why, in that other place, mistakes of this nature are so often made. Not long ago there was a great panic raised, very much by what was said in another place about France. Now an attempt is made there to create a panic upon this question. In the hall of the Reform Club there is affixed to the wall a paper which gives a telegraphic account of what is being done in this House every night, and what is also being done in the other House, and I find almost every night from the beginning of the session the only words that have appeared on that side devoted to a record of the proceedings of the House of Lords, are these words: "Lords adjourned." The noble lord at the head of the government is responsible. He has brought this House nearly to the same condition. We do very little, and they do absolutely nothing. All of us, in our younger days, I am quite sure, were taught by those who had the care of us, a verse which was intended to inculcate the virtue of industry. One couplet was to this effect:

"Satan still some mischief finds
For idle hands to do."

And I do not believe that men, however high in station, are exempt from that unfortunate effect which arises to all of us from a course of continued idleness. But I should like to ask this House in a most serious mood what is the reason that any man in this country has now more anxiety with regard to the preservation of peace with the United States than he had a few years ago. Is there not a consciousness in our heart of hearts that we have not, during the last five years, behaved generously to our neighbor? Do not we feel somewhat a pricking of conscience; and are we not sensible that conscience tends to make us cowards at this particular juncture?

Well, I shall not review the past transactions with anger, but with feelings of sorrow; for I maintain, and I think history will bear out what I say, that there is no generous and high-minded Englishman who could look back upon the transactions of the last four years without a feeling of sorrow at the course we have pursued on some particular occasions. As I am wishful to speak with a view to a better state of feeling both in this country and in the United States, I shall take the liberty, if the House will permit me for a few minutes, to refer to two or three of these transactions where, I think, though perhaps we were not in the main greatly wrong, yet in some circumstances, we were so far unfortunate as to have created an irritation which at this moment we wish did not exist. The honorable member for Horsham (Mr. Seymour Fitzgerald) referred to the course taken by the government with regard to the acknowledgment of the belligerent rights of the South. Now, I have never been one to condemn the government for acknowledging those belligerent rights except upon this ground—I think it might be logically contended that it might possibly become necessary to take that step; but I do think the time and manner in which it was done were most unfortunate, and could not but produce very evil effects. Going back nearly four years, we recollect what occurred when the news arrived of the first shot having

been fired at Fort Sumter. That, I think, was about the 12th of April. Immediately after that time it was announced that a new minister was coming to this country. Mr. Dallas had intimated to the government that, as he did not represent the new President, he would rather not undertake anything of importance; but that his successor was on his way, and would arrive on such a day. When a man leaves New York on a given day you can calculate to about twelve hours when he will be in London. Mr. Adams, I think, arrived in London about the 13th of May, and when he opened his newspaper next morning he found the proclamation of neutrality acknowledging the belligerent rights of the South. I say that the proper course to have taken would have been to wait till Mr. Adams arrived here, and to have discussed the matter with him in a friendly manner, explaining the ground upon which the English government had felt themselves bound to issue that proclamation, and representing that it was not done in any manner as an unfriendly act towards the United States government. But no precaution whatever was taken. It was done with unfriendly haste, and had this effect, that it gave comfort and courage to the conspiracy at Montgomery and at Richmond, and caused great grief and irritation among that portion of the people of America most strongly desirous of maintaining amicable and friendly relations between their country and England. To illustrate this point allow me to suppose a great revolt had taken place in Ireland, and that we had sent over within a fortnight of the commencement of such an unfortunate transaction a new minister to Washington, and that on the morning after arriving there he should find that, without consulting him, the government had taken a hasty step by which the belligerent rights of the insurgents had been acknowledged, and by which comfort and support had been given them. I ask any man whether, under such circumstances, the feeling throughout the whole of Great Britain, and in the mind of every man anxious to preserve the unity of Great Britain and Ireland, would not necessarily be one of irritation and exasperation against the United States? I will not argue this matter further; to do so would be simply to depreciate the intellect of the honorable gentlemen listening to me. Seven or eight months afterward there happened another transaction of a very different but unfortunate nature—that is, the transaction arising out of the seizure of two southern envoys out of an English ship, the Trent. I recollect making a speech down at Rochdale about the time of that occurrence. It was a speech entirely in favor of the United States government and people; but I did not then undertake, as I do not undertake now, in the slightest degree, to defend the seizure of those two envoys. I said that although precedents for such an action might possibly be found to have occurred in what I will call some of the evil days in our history, at any rate it was opposed to the maxims and principles of the United States government, and, as I thought, a bad act, which should not have been done. Well, I do not complain of the demand that those men should be given up; but I do complain of the manner in which that demand was made, and the menaces by which it was accompanied. I think it was wrong and unstatesmanlike that at the moment we heard of a transaction, when there was not the least foundation for supposing that the United States government were aware of the act, or had in the slightest degree sanctioned it, as we since well know they did not, that you should immediately get ships ready and send off troops, and let out the organs of the press, who are always ready to inflame the passions of the people to frenzy, to prepare their minds for war. But that was not all, because before the United States had heard a word of the matter from this country their Secretary of State had written to Mr. Adams a dispatch, which was communicated to our government, and in which it was stated that the transaction had not been done by any orders of theirs, and therefore, as far as they and we were concerned, it was a pure accident, and they should consider it with the most friendly disposition toward this country. How came it that that dispatch was never published for the information of the people of this country? How happened it that during one whole month the flame of war was fanned by the newspapers, particularly by those supposed to be devoted to the government, and that one of those newspapers, supposed to be peculiarly devoted to the prime minister, had the audacity, I do not know whence it obtained its instructions, to deny that any such dispatch had been received? Now, sir, I am of opinion that it is not possible to maintain amicable relations with any great country, and I think it is not with any little one, unless governments will manage these different transactions in what I will call a more courteous and more honorable manner. I happen to know, for I received a letter from the United States, from one of the most eminent men in that country, dated only two days before those men were given up, and he said the real difficulty in the course of the President was that the menaces of the English government had made it almost impossible for them to concede; and the question they asked themselves was whether the English government was intending to seek a cause of quarrel or not. And I am sure the noble lord at the head of the government, if such a demand had been made upon him with courtesy and fairness, as between friendly nations, would have been more disposed to concede, and would have found it much more easy to concede than if the demand had been made accompanied by menaces such as his government offered to the government of the United States. Now, the

House will observe that I am not condemning the government of this country for the main point of what they did. I am only condemning them because they did not do what they had to do in that manner which would be most likely to remove difficulties and preserve a friendly feeling between the two nations.

Then I come to the last thing I shall mention—to the question of the ships which have been preying upon the commerce of the United States. I shall confine myself to that one vessel, the *Alabama*. She was built in this country; all her munitions of war were from this country; almost every man on board her was a subject of her Majesty. She sailed from one of our chief ports. She is reported to have been built by a firm in whom a member of this House was, and I presume is, interested. Now, sir, I do not complain. I know that once, when I referred to this question two years ago, when my honorable friend, the member for Bradford, brought it forward in this House, the honorable member for Birkenhead (Mr. Laird) was excessively angry. I did not complain that the member for Birkenhead had struck up a friendship with Captain Semmes, who may be described as another sailor once was of similar pursuits, as being “the mildest-mannered man that ever scuttled ship.” Therefore I do not complain of a man who has an acquaintance with that notorious person, and I do not complain, and did not then, that the member for Birkenhead looks admiringly upon the greatest example which men have ever seen of the greatest crime which men have ever committed. I do not complain even that he should applaud that which is founded upon a gigantic traffic in living flesh and blood, which no subject of this realm can enter into without being deemed a felon in the eyes of our law and punished as such. But what I do complain of is this, that the honorable gentleman, the member for Birkenhead, a magistrate of a county, a deputy lieutenant—whatever that may be—a representative of a constituency, and having a seat in this ancient and honorable assembly, that he should, as I believe he did, if concerned in the building of this ship, break the law of his country, driving us into an infraction of international law, and treating with undeserved disrespect the proclamation of neutrality of the Queen. I have another complaint to make, and in allusion to that honorable member. It is within your recollection that when on the former occasion he made that speech and defended his course, he declared that he would rather be the builder of a dozen *Alabamas*, than do something which nobody had done. That language was received with repeated cheering from the opposition side of the House. Well, sir, I undertake to say that that was at least a very unfortunate circumstance, and I beg to tell the honorable gentleman that at the end of the last session, when the great debate took place on the question of Denmark, there were many men on this side of the House who had no objection whatever to see the present government turned out of office, for they had many grounds of complaint against them; but they felt it impossible that they should take the responsibility of bringing into office the right honorable member for Buckinghamshire or the party who could utter such cheers on such a subject as that.

Turning from the member for Birkenhead to the noble lord at the head of the Foreign Office, he who, in the case of the acknowledgment of belligerent rights, had proceeded with such remarkable celerity, undue and unfriendly haste, in the course he had pursued when he came to the question of the *Alabama* amply compensated for it by his slowness of procedure, and what was a curious thing, which even the noble lord's colleagues have never been able to explain, although he sent to Cork to stop the *Alabama* if she arrived there, she having gone out of the jurisdiction of the Crown of these Islands he allowed her afterward to go into a dozen or a score of ports belonging to this country, in different parts of the world. It seems to me that this is rather a special instance of that feebleness of purpose on the part of the noble lord which I regret to say has on many occasions, done much to mar what would otherwise be a great political career. Now, I will not detain the House on the question of the rams. The honorable member for Birkenhead, or the firm or family, or whoever the people are at Birkenhead who do these things, this firm at Birkenhead, after they had seen the peril into which the country was drifting on account of the *Alabama*, proceeded most audaciously to build those two rams; and it was only at the very last moment, when on the eve of a war with the United States on account of those rams, that the government happily had the courage to seize them, and thus the last danger was averted. I take it there are some ship-owners here. I dare say there are many in London—there are many in Liverpool—what would be the feeling in this country if they suffered in this way from ships built in the United States? There is a ship-owner in New York, Mr. Lowe, a member of the Chamber of Commerce of New York. He had three large ships destroyed by the *Alabama*; and the *George Griswold*, that came to this country freighted with a heavy cargo of provisions of various kinds for the suffering people of Lancashire, was destroyed on its return passage, and the ship that destroyed it may have been, and I believe was, built by these patriotic ship-builders of Birkenhead. These are things that rankle in the breast of the country that is subjected to those losses and indignities. Even to-day I see in the paper that a vessel that went out of this country has destroyed ten or eleven ships between the Cape of Good Hope and Australia. I have thought it unnecessary continually to bring Amer-

can questions before the House, as some gentlemen have done during the two or three last sessions. They should have asked a few questions in regard to those ships; but no, they asked no question upon these points. They asked questions upon every point on which they thought they might embarrass the government and make the great difficulties of the government greater in all their transactions with the United States. But the members of the government have not been too wise. I hope it will not be thought that I am unnecessarily critical if I say that governments are not generally very wise. Two years ago the noble lord at the head of the government and the attorney general addressed the House. I asked the noble lord—I do not often ask him for anything—to speak, if only for five minutes, words of generosity and sympathy to the government and people of the United States. He did not do it. Perhaps I was foolish to expect it. The attorney general made a most able speech. It was the only time I have listened to him, in all the time I have known him in this House, with pain, for I thought his speech was full of bad morals and bad law. I am quite certain that he gave an account even of the facts of the case which was not as ingenuous and fair as the House had a right to expect from him. Next session the noble lord and the attorney general turned quite round. They had a different story about the same transaction, and gradually, as the aspect of things was changed on the other side of the Atlantic, there has been a gradual return to good sense and fairness, not only on the part of members upon the treasury bench, but of other members of the House.

Now, sir, I would not willingly say a word that would wound either the noble lord at the head of the Foreign Office, or the Chancellor of the Exchequer, because I do not know amongst the official statesmen of this country two men for whom I have greater sympathy or more respect; but I have to complain of them; I do not know why it is that they both go down to Newcastle—a town in which I feel a great interest—and there give forth words of offense and un-wisdom. I know that what the noble lord said was all very smart, but really it was not true; and I have not much respect for a thing that is merely smart, and is not true. The Chancellor of the Exchequer made a statement too. The papers made it appear that he did it with exultation; but that is a mistake. But he made a statement, and though I do not know what will be in his budget I know his wishes in regard to that statement, namely, that he never had made it. Those gentlemen, bear in mind, sit on the hill; they are not obscure men, making speeches in a public house, or even at a respectable mechanics' institution; they are men whose voice is heard wherever the English language is known. And knowing that, and knowing what effect their speeches will have, especially in Lancashire, where men are in trade, and feel the profits and losses of everybody, they use the language I complain of; and I can conceive some idea of the irritation those statements must have caused in the United States. I might refer to the indiscriminating abuse of the honorable and learned gentleman, the member for Sheffield; and I may add to that the unsleeping ill-will of the noble lord, the member for Stamford. I am not sure that these two members of the House are in the least degree converted yet. I think I heard the honorable member for Sheffield utter to-night some ejaculation that looked as if he retained all of his old sentiments. [Mr. Roebuck: Exactly.] I am sorry it is so. I did hope that these things would be regretted and repented of; and I must express my hope that if any one of you who have been thus ungenerous shall ever fall into trouble of any kind you will find your friends more kind and generous than you have been to your fellow countrymen—for I will still call them so—at the other side of the Atlantic. And as to the press, sir, I think it is unnecessary to say much about that, because now every night those unfortunate writers are endeavoring to back out of everything they have been saying; and I can only hope that their power of evil in future will be greatly lessened by the stupendous exhibition of ignorance and folly which they have made to the world.

Now, sir, having made this statement, I suppose the noble lord, the member for Stamford if he were to get up after me, would say, "Well, if all this be true—if we have done all these injurious things—if we have created all this irritation in the United States, will it not be likely that that irritation will provoke a desire for vengeance, and that the chances of war are greatly increased by it?" I do not know whether the chances of war are increased, but I will say that not only is war not certain, but it is to the last degree improbable. But, sir, there is another side to this question. All England is not included in the rather general condemnation which I have thought it my duty to express. There is another side. Looking to our own population, what have the millions been saying and doing—the millions you are so much afraid of!—especially the noble lord, the member for Stamford, who objects to the transference of power to those millions from those who now hold it, and that is a natural thing. But I beg leave to tell the House that, taking the counties of Lancashire and Yorkshire, your great counties of population, the millions of men there, whose industry has not only created but sustains the fabric of your national power, have had no kind of sympathy with the views I have been condemning. They have been more generous, and more wise; they have shown that magnanimity and love of freedom are not extinct. And speaking of the county from which I come, the county of many sorrows, whose griefs have

hung like a dark cloud over almost every heart during the last three years, all the attempts there of the agents of the confederacy by money, by printing, by platform speeches, by agitation, have utterly failed to get from that population one expression of sympathy with the American insurrection. And, sir, if the bond of union and friendship between England and America shall remain unbroken, we shall not have to thank the wealthy and cultivated, but the laborious millions whom statesmen and histories too frequently make little account of. They know a little of the United States, which gentlemen opposite, and some on this side of the House do not appear to know. They know that every man of them would be better off on the American continent, if he chose to go there, and would be welcome to every right and privilege that the people are in possession of. They know further, that every man may have from the United States government a free gift of one hundred and sixty acres of the most fertile land in the world. [A laugh.] I do not understand that laugh, but one hundred and sixty acres of land is a great deal for a man who has no land, to get under the homestead act of America. I can tell you that the homestead act and the liberality of the American government, have had a great effect upon the population of the north of England, and I can tell you this, that the laboring population of this country, the artisans and the mechanics, will never join heartily in any policy which is intended to estrange the people of the United States from the people of the United Kingdom. But, sir, we have other securities for peace which are not less than these, and I find them in the character of the government and people of the American Union. I think the right honorable gentleman, the member for Buckinghamshire (Mr. Disraeli) referred to what must reasonably be supposed to happen in case this rebellion should be put down, that when a nation was exhausted it would not rush rashly into a new struggle. The loss of life has been great, the loss of treasure enormous. Happily for them this life and this treasure has not been sacrificed to keep a Bourbon on the throne of France, nor to keep the Turks in Europe; it was for an object which every man could comprehend, which every man could examine by the light of his own intelligence and his own conscience; and if men have given their lives and their possessions, it was for the attainment of a great end, the maintenance of the unity and integrity of a great country. History in the future must be written in a different spirit from all history of the past, if it shall express any condemnation of that people. Mr. Lincoln who is now for the second time President of the United States, was elected exclusively by what was termed the republican party. He is now elected by what may be called the great Union party of the nation. But Mr. Lincoln's party has always been for peace. That party in the North has never carried on any war of aggression, and has never desired one. I speak of the North only—the free States. And let the House remember that in that country, landed property, property of all kinds, is more universally diffused than in any other nation; that instruction and school education are also more widely diffused there than among any other people. Well, I say, they have never carried on hitherto a war for aggrandizement or for vengeance, and I believe they will not begin one now. Canada, I think the noble lord will admit, is a very tempting bait, not for the purpose of annexation, but for the purpose of humiliating this country. I agree with the honorable gentlemen who have said, that it would be discredit to England, in the light of her past history, that she should leave any portion of her empire undefended which she could defend. But still, it is admitted—and I think the speech of the right honorable gentleman, the member for Calne, (Mr. Lowe,) produced a great effect upon those who heard it—the House admitted that in case of war with the United States, Canada could not be defended by any power on land or at sea, which this country could raise or spare for that purpose. I am very sorry, not that we cannot defend Canada, but that any portion of the dominions of the British Crown is in such circumstances as to tempt evil-disposed people to attack it with a view of humiliating us, because I believe that transactions which humiliate a government and a nation, are not only disagreeable, but a great national harm. But now, is there a war party in the United States? Well, I believe there is. It is that party which was a war party eighty years ago. It is the party represented by honorable gentlemen who sit on that bench—the Irish party. They, in the United States who are hostile to this country, are those who were recently malcontent subjects of the right honorable gentleman, the member for Tamworth. It is these, and such as these, to whom the noble lord at the head of the government offers only such consolation as that of telling them that “the rights of the tenants are the wrongs of the landlords,” who constitute the only war party in the United States; and it was the war party in the days of Lord North. But the real power of the United States does not rest on that class. American mobs—and excepting some portion of the population of New York I would not apply the language even to them, for the sake of forcing their Congress and their Executive to a particular course—are altogether unknown. The real mob in your sense, is that party of chivalrous gentlemen in the South, who have received, I am sorry to say, so much sympathy from some persons in this country and in this House. But the real power depends upon another class, the land-owners throughout the country, and there are millions of them. Why, in this last election for President of the United States, I was told by a citizen of New York, who was most

active in the election, that in the United States alone, 100,000 Irish votes were given, as he expressed, solidly, that is in one mass, for General McClellan, and that not more than 2,000 were given for President Lincoln. You see the preponderance of that party in the city of New York, and that is the feeling throughout the State of New York; but throughout the whole of the United States it is merely a small percentage which has no sensible effect upon the constitution of Congress, or upon legislation or government. My honorable friend the member for Bradford, (Mr. W. E. Forster,) referred to a point which I suppose has really been the cause of this debate, and that is the temper of the United States in making certain demands upon our government. I asked a question the other night after the noble lord had asked a question upon the subject—I asked whether we had not claims against them. I understand claims were made upon us by the United States amounting to £300,000 or £400,000. I am afraid that we have claims against them amounting probably to as much as that. If any man thinks he has a right to go to law with another, and that other has an answer to his claim, the case must be heard. And so between two great nations and two free governments. If one has claims against the other, and the other has claims against it, clearly, nothing can be more fair than that those claims should be courteously and honestly considered. It is quite absurd to suppose that the English government and the government at Washington can have a question about half a million of money, which they cannot amicably settle. The noble lord, I believe, thinks it is not a question for arbitration, but that it is a question of principle. Well all questions of property almost, are questions of law, and you go to a lawyer and settle them, if you can. In this case it would be surely as easy to have the matter settled by some impartial person, as it was to ask the Senate or somebody at Hamburg to settle a question between this country and the empire of Brazil. Our most perfect security is, that as the war in America draws to a close, if it should happily soon draw to a close, we shall become more generous to them, and their government and people will probably become less irritated toward us, and when the passions have cooled down, I am quite sure that Mr. Seward on that side, and Earl Russell on this, Mr. Adams here, and Sir Frederick Bruce there, will be able without much difficulty, to settle this, after all, unimportant matter as a question of accounts between the two nations.

I have only one more observation to make, and it is this: I suspect the root of all the unfortunate circumstances that have occurred is in the feeling of jealousy which we have cherished with regard to the American nation. It was very much shown at the beginning of this war, when a member whom I will not name, for I am sure his wish is that his name should not be mentioned in connection with it now, spoke of the bursting of the bubble republic. I recollect Lord John Russell as he then was, sitting on that bench turned round and rebuked him in language that was worthy of his name, and character, and position. I beg to tell that gentleman, and anybody else who talks about a bubble republic, that I have a strong suspicion he will see that a great many bubbles will burst before that. Why should we fear a great nation on the American continent? Some people fear that should America become a great nation, she will be arrogant and aggressive. It does not follow that it should be so. The character of a nation does not depend altogether upon its size, but upon the instruction, the civilization, and the morals of its people. You fancy the supremacy of the sea will pass away from you; and the noble lord, I dare say, who has had much experience, and is wiser on the subject than any man in the House, will say that "Rule Britannia" would become obsolete. Well, inasmuch as the supremacy of the sea means arrogance and the assumption of supremacy on the part of this country, the sooner that becomes obsolete the better. I do not believe that it is for the advantage of this country or any country in the world that any one nation should pride itself upon what it terms supremacy of the sea; and I hope the time is coming—I believe the hour is hastening—when we shall find that law and justice shall guide the counsels, and shall direct the policy of the Christian nations of the world. Nature will not be baffled because we are jealous of the United States—the decrees of Providence will not be overthrown by aught we can do. The population of the United States is now not less than thirty-five millions. When the next Parliament of England has lived to the age that this has lived to, that population will be forty million, and you may calculate that increase at the rate of rather more than one million of persons per year. Who is to gainsay it? Will constant snarling at a great republic alter the state of things or swell us up in these islands to forty million or fifty million, or bring them down to our thirty millions? Honorable members and the country at large should consider these facts, and learn from them that it is the interest of the nations to be as one—to be in perfect courtesy and amity with the English nation on the other side of the Atlantic. I am sure the longer that nation exists the less will our people be disposed to sustain you in any needless hostility against them, or jealousy of them. And I am the more convinced of this from what I have seen of their conduct in the north of England during the last four years. I believe on the other hand, that the American people, when this excitement is over, will be willing, so far as aggressive acts against us are concerned, to bury in oblivion transactions which have given them much pain, and that they will make the allowance

which they may fairly make, that the people of this country, even those high in rank and distinguished in culture have had a very inadequate knowledge of the real state of the events which have taken place in that country since the beginning of the war. It is on record that when the author of the "Decline and Fall of the Roman Empire" was about beginning his great work, David Hume wrote a letter to him, urging him not to employ the French but the English tongue, "because," he said, "our establishments in America promise superior stability and duration to the English language." How far that promise has been in part fulfilled, we who are now living can state; but how far it will be more largely and more completely fulfilled in after-times we must leave after-times to tell. I believe that in the centuries which are to come, it will be the greatest pride and the highest renown of England, that from her loins have sprung a hundred millions—it may be two hundred millions—of men who dwell and prosper on that continent which the old Genoese gave to Europe. Sir, if the sentiments which I have uttered shall become the sentiments of the Parliament and people of the United Kingdom; if the moderation which I have described shall mark the course and government of the people of the United States—then, notwithstanding some present irritation and some present distrust—and I have faith in both us and them—I believe that these two great commonwealths will march abreast, the parents and the guardians of freedom and justice, wheresoever their language shall be spoken and their power shall extend.

VISCOUNT PALMERSTON: Sir, however long this discussion may have been, I, for one, cannot regret that it has taken place; for by the majority of members in this House two opinions have been expressed which cannot fail to be useful in the quarters to which they have been addressed. The first opinion is that which has been peculiarly dwelt upon by the honorable member who has just sat down, namely, the most earnest desire that the most friendly relations should be maintained between Great Britain and the United States of America; and next, the opinion that we should maintain the connection which exists between this country and our provinces on the North American continent so long as the people of those provinces are desirous of maintaining their connection with the mother country. The honorable member who had just spoken (Mr. Bright) has made what in one respect may appear a paradoxical, but what, I think, as human nature is constituted, was a very conciliatory speech toward the United States, for though the honorable member reviewed a long course of events to prove that the United States have been most grievously ill-treated by this country—I do not agree with him in any one of these points—it is no doubt a part of human nature that you cannot better please any man or any set of men than by telling them they have been exceedingly ill-used. I will not follow the honorable member when he complains that we admitted the belligerent rights of the South—an admission which was the result of necessity and not of choice; I will not follow him into the discussion of the Trent question, which I thought had been fully disposed of, and into the questions which have arisen between the government, or rather, I should say, the people of some parts of Canada and the United States, because, as he admitted himself, the conduct of the Canadian government has been such as to be acknowledged gratefully by the government of the United States as a full and complete fulfilment of the duties of friendly neighborhood. The honorable gentleman says there exists in this country a jealousy of the United States. Sir, I utterly deny that assertion. We feel no jealousy of the United States. On the contrary, I am sure that every Englishman must feel proud at seeing upon the other side of the Atlantic a community sprung from the same ancestry as ourselves, rising in the scale of civilization, and attaining every degree of prosperity—aye, and of power, as well as wealth. I therefore entirely deny that there exists in this country any feeling of jealousy as regards the United States. Undoubtedly there are men who, differing from the honorable gentleman in their theory of government, cannot see with the same approbation which he feels the trial on the other side of the Atlantic of a system of government which we do not think is the best or the most conducive to the happiness of those for whom it was established. But that is an entirely different thing from the feeling which the honorable gentleman has supposed. No doubt during this contest in America there has been expressed, and probably felt, both in the North and in the South, some irritation against this country. But that irritation has been caused by the natural feeling which two parties in a quarrel have, that a third party who does not espouse either side is to a certain degree doing both sides an injury, or giving them some cause of complaint or of jealousy. The North wished us to declare on their side; the South wished us to declare on theirs; and as we maintained a perfect neutrality between the two, some slight degree of irritation arose on both sides against us. But I am equally persuaded, with the honorable gentleman, that among the great bulk of the people of the United States there are feelings deeper than that irritation—feelings of good will towards the country from which their ancestors were derived; and I am satisfied that when this unfortunate contest shall have ceased, whatever its termination, the natural feeling of good will and relationship which ought to prevail between two kindred nations will take the place of any temporary irritation which the circumstances of the war may have occasioned. I am quite satisfied also that England will not give to the United States

any just cause of complaint—that the war will not proceed from us; and if war does not proceed from our side, and if, as the honorable gentleman thinks, it does not proceed from theirs, then we may have a well-founded expectation that, in spite of adverse appearances for the moment, and in spite of the prognostications of many, the friendly relations between this country and the United States will not incur any real danger of interruption. But that is no reason why we should not use the means in our power to place our fellow-citizens, if I may so call them, in Canada and the northern provinces, in a state of defense should they be attacked. Sir, there is no better security for peace than strength to resist attack, if attack should come. That is no provocation. It is an abuse of terms to say that when you employ means to prevent danger, if it should arise, you are provoking that danger and irritating the party against whom those precautions may be taken. If no animosity exists these precautions can have no effect except that of inspiring confidence in the party in whose favor they are made. If, on the other hand, there be a disposition to attack, that disposition is sure to be lessened in proportion as the chance of success is diminished. Now, I cannot agree with my right honorable friend the member for Calne (Mr. Lowe) in thinking that whatever are the difficulties—and difficulties undoubtedly there may be in successfully resisting an attack, if it should be made by America on Canada, we should regard the defense of Canada as an undertaking which we could not succeed in accomplishing. I think, on the contrary, that Canada may be defended, and I also feel that the honor of England and the good faith which is due to our loyal fellow-countrymen in these northern provinces require that, at all events, we should make the attempt successfully to defend her. Not concurring, therefore, in the argument of my right honorable friend that Canada cannot be defended—least of all do I concur in his conclusion that, assuming defense to be impossible, we ought forthwith to withdraw our troops. I neither admit the argument nor assent to its conclusion; and I am anxious that there should be no mistake on the subject, and it may be fully understood that it is not the intention of the government to follow the advice of my right honorable friend and withdraw our troops from Canada. On the contrary, I feel that the honor of England demands and that our duty as a government binds us to do everything, moreover, that we shall have the sanction of the British nation in doing everything that we can to defend our fellow-countrymen in Canada if attacked. As I have already said, I am persuaded that the tone of moderation which has prevailed in this debate must be useful both in Canada and in the United States. No doubt there are those who have endeavored to persuade the people of the United States that there exists in this country a spirit of hostility toward them, and that we are looking out for grounds of quarrel. There can, however, be no real and just grounds for quarrel between us. We certainly shall not seek such grounds, nor shall we invent them; and if the speech of the honorable gentleman who has just sat down be a true and faithful exposition of the sentiments of the people of the United States, there can be no well-founded apprehension that the peace happily prevailing between us is in danger of interruption. I can confirm the statement of my right honorable friend, that the present relations between the two governments are perfectly friendly and satisfactory. We have no complaint to make of the government of the United States; they have acted in a fair and honorable manner in all the matters that may have arisen between us. No doubt there are claims which they have put forward, not urging them at present, but laying the ground for their discussion at some future time. No doubt, also, we have claims upon them which we do not put forward at present, but have announced to be claims which at some future time may be discussed. But I should trust that we both feel it to be for the interest, aye, and for the honor of the two countries, that peace should be preserved, and that matters of this sort ought to be capable of a friendly and amicable adjustment. All I can say is that the government, as long as they continue to be chargeable with the conduct of affairs, will do everything that the honor and interests of the country permit them to do to maintain inviolate the relations of peace and friendship between the two countries.

APPENDIX No. XXIV.

DEBATES IN THE HOUSE OF COMMONS OF MAY 26 AND 30, 1865, ON THE SUBJECT OF THE SO-CALLED ALABAMA CLAIMS.*

[From Hansard's Parliamentary Debates, vol. 179, p. 878.]

HOUSE OF COMMONS, *May 26, 1865.*

UNITED STATES.—THE "ALABAMA" CLAIMS—QUESTION.

SIR JOHN WALSH said he would beg to ask the first lord of the treasury whether her Majesty's government has received from the government of the United States any formal and official demand for compensation to American subjects for losses sustained by the Alabama, or any other confederate cruisers alleged to have been equipped in British ports?

VISCOUNT PALMERSTON. Sir, a correspondence has been going on for some time—two years I think—between the government of the United States and her Majesty's government, on the subject of the prizes taken by the Alabama and other vessels of a similar character. Within the last few days we have received further communications from Mr. Adams on that subject, to which of course, as yet there has not been sufficient time to reply. It is right to say that the whole correspondence, though each party has stated their respective views, has been carried on in very friendly and most amicable terms.

[From Hansard's Parliamentary Debates, vol. 179, pp. 1107–1109.]

HOUSE OF COMMONS, *May 30, 1865.*

UNITED STATES.—THE ALABAMA—QUESTION.

MR. SHAW-LEFEVRE. As some misapprehension was caused by the answer of the noble lord (Viscount Palmerston) the other night, to a question put by the honorable member for Radnorshire, (Sir John Walsh,) I wish to ask whether the communication which the noble lord said had been received from the United States government, with respect to the losses caused by the Alabama and other similar vessels, is in any way contradictory in tenor and spirit to Mr. Adams's dispatch of October, 1863, in which he stated that, in order to preserve amity and friendship between the two countries, he was instructed by his government to postpone any question which might arise with reference to the depredations of the Alabama to some future time, when it could be discussed with calmness. And I also wish to ask whether that communication was dated before or after the accession of President Johnson.

VISCOUNT PALMERSTON. I can only repeat what I said on a former occasion—that communications have been going on between the two governments for a considerable time past, with regard to the captures made by the Alabama and other ships of the same kind. My honorable friend wishes to know whether in a recent communication, the identical words were repeated which were contained in any former one. I am not aware that the identical words are used; but the general tenor of the communication is the same, and refers to the same matters as the previous communications, a certain portion of which have been laid before Parliament, and are now on the table of the House. My honorable friend asks whether the last communication was made since the accession of President Johnson. It was made here since that time; but whether the instructions upon which it was made were issued by President Lincoln or President Johnson I cannot inform you.

LORD ROBERT CECIL. I understood the noble lord at the head of the government to

* Transmitted with dispatch No. 975, from Mr. Adams to Mr. Seward, June 2, 1865, see Vol. I, p. 383.

say that the former demands on the subject of the Alabama had been conveyed in a correspondence of which a portion had been laid before Parliament. I wish to ask the noble lord what are the dates, or at least, what is the approximate period of the correspondence relating to the demands on account of the Alabama which has not been laid before Parliament?

VISCOUNT PALMERSTON. I am unable to answer off-hand the question of the noble lord.

Mr. W. E. FORSTER. Is it not possible in a case of such considerable importance, for the under-secretary for foreign affairs, or some other person on behalf of the government to give more explicit answer to the question which has been put by the honorable member? because the fact is one of very considerable importance. There seems to be an impression abroad—I believe an unfounded impression—that since the accession of President Johnson, claims with regard to the Alabama have been made in a different spirit from that in which they were made formerly. I rather gather from the question of the noble lord (Lord Robert Cecil) that he is not altogether satisfied with the reply of the noble lord at the head of the government. It is of importance that the mind of the country should be set at rest upon this subject; and if it be the case, as I believe it is, that no fresh feature has been introduced into the claims on account of the Alabama within these few months, I hope the under-secretary for foreign affairs will be able to state that distinctly.

Mr. LAYARD. The case is very simple. The original demand was that contained in papers which have been laid on the table of the House last year, or at the end of the previous session. Whenever cases have arisen, whether solitary or otherwise, of vessels captured by the Alabama and other ships of that nature, Mr. Adams, in putting forward the claim in each particular case, has reiterated the original claim almost in the same words. A short time ago, in a note which reached her Majesty's government before the death of President Lincoln, that demand was incidentally renewed in words almost identical with the original claim. That is the state in which the case rests at present. There has been no fresh demand, neither has the claim been withdrawn. The demands which have been made of late are continuations of the original demand.

Motion agreed to.

APPENDIX No. XXV.

DEBATE IN THE HOUSE OF COMMONS OF JULY 23, 1866, ON "OUR RELATIONS WITH THE UNITED STATES."*

[From Hansard's Parliamentary Debates, vol. 184, p. 1280.]

HOUSE OF COMMONS, *July 23, 1866.*

UNITED STATES—OUR RELATIONS WITH—QUESTION.

Mr. WHITE said he would beg to ask the secretary of state for foreign affairs whether, looking to the conspicuous good faith and friendly feeling of the government of the United States towards this country in its recent conduct to the Fenians, her Majesty's government is prepared to submit all claims and matters in dispute between the two powers to an arbitration mutually acceptable.

LORD STANLEY. I agree, sir, in the opinion which the honorable member has expressed as to the friendly and honorable feeling that has been shown by the government of the United States with regard to this Fenian affair. I am very anxious personally—and I can speak for my colleagues as well as myself—to do anything that is reasonably possible to remove any feeling of irritation or of soreness which may remain in consequence of circumstances connected with the late war. But, with respect to those claims, I am afraid I cannot give him so precise and so positive an answer as he may desire. With regard to the most important of those claims a full discussion has taken place between the government of the United States and those who preceded us in office. That discussion was terminated six or seven months ago, and during the very short time I have been in office those claims have not been revived. They involved questions of considerable perplexity and difficulty, and I need not add that I have had very little leisure to consider them. In any case it would be premature on the part of the government to say immediately what answer we should be prepared to give to claims of that kind when they are revived, until and unless they are brought before us. Perhaps I may say that, with a view to lessen the probability of such differences arising in future, it is the intention of the government to advise her Majesty to issue a royal commission to inquire into the working of the neutrality laws, and, if necessary, to revise those laws.

* Transmitted with dispatch No. 1,244, from Mr. Adams to Mr. Seward, July 26, 1866, see Vol. III, p. 631.

APPENDIX No. XXVI.

DEBATES IN THE HOUSE OF LORDS AND THE HOUSE OF COMMONS OF JUNE 30, 1863, ON THE "RECOGNITION OF THE SOUTHERN CONFEDERACY."*

[From Hansard's Parliamentary Debates, vol. 171, p. 1719.]

HOUSE OF LORDS, *June 30, 1863.*

AMERICA—QUESTION.

LORD CAMPBELL desired to ask the noble earl, the secretary of state for foreign affairs, if the public interest permitted him to reply, whether, since he answered a similar question asked by the noble marquess (the Marquess of Clanricarde) three or four days ago, he had received from the French government any communication, documentary, or verbal, designed, or calculated, or showing any disposition to promote a common line of action between the two governments with a view to the termination of hostilities in America? That very day the Paris correspondent of the Times had asserted, with the greatest emphasis and exactness, that such a document as that to which he referred was in existence; an assertion which derived support from statements made in other quarters. Under these circumstances he thought it was desirable their lordships should have some information from the government on the subject.

EARL RUSSELL. The only answer I can give to my noble friend is that the French ambassador called on me about an hour ago at the Foreign Office, and stated, that having heard many rumors to the effect that he had been ordered by his government to show a communication on this subject to the British government, he wished to say that he had received no such order.

[From Hansard's Parliamentary Debates, vol. 171, pp. 1769, 1771-1841.]

HOUSE OF COMMONS, *June 30, 1863.*

RECOGNITION OF THE SOUTHERN CONFEDERACY—QUESTION.

Mr. W. E. FORSTER said he wished to ask the under secretary of state for foreign affairs, whether any communications has been received by the Foreign Office from the French government relating to the recognition of the southern confederacy. He would also beg to ask, in consequence of certain remarks which have appeared of late in the public journals, whether any recent communication has passed between this country and the French government with regard to an offer of mediation or a proposal for an armistice between the contending parties in America?

Mr. LAYARD. Sir, it is very important that I should give a clear and definite answer to my honorable friend. No communication whatever, either as regards an offer of mediation or a proposal for an armistice has been received by her Majesty's government from France up to this moment.

Mr. W. E. FORSTER. Or recognition?

Mr. LAYARD. Neither recognition, nor armistice, nor mediation, nor any subject of that nature.

UNITED STATES—RECOGNITION OF THE SOUTHERN CONFEDERACY—RESOLUTION.

Mr. ROEBUCK, after presenting a petition praying the House to enter into negotiations with the great powers of Europe, with the object of recognizing the independence of

* See dispatch No. 441, from Mr. Adams to Mr. Seward, July 1, 1863, and dispatch No. 333, from Mr. Dayton to Mr. Seward, July 2, 1863, Vol. I, p. 483.

the Confederate States of America, said: I am well aware of the gravity and importance of the question I am about to bring before the House; and I well know, also, the sort of obloquy which will be directed against me for so doing by those persons who deem themselves the salt of the earth, and who think that every opinion of theirs ought to be the opinion of all other men, or that all other men ought to bow to their opinions. In spite, however, of that obloquy, believing the course I shall take to be for the interests of my countrymen, I now appeal to the House, to its honor and duty, to ask the Crown to enter into negotiations with the great powers for the purpose of acknowledging the independence of the Southern States of North America. I must, in the first place, be permitted to lay before the House a very short history which I think necessary for the full understanding of my argument. Though I do not suppose that any gentleman in this House is ignorant of what I am about to state, yet, in order to render my argument complete, I must lay this groundwork. About two centuries and a half ago England prepared to colonize the newly-discovered continent of America, and proposed to establish the colony partly as a refuge for persons who wished to leave England, and partly with the view of laying the foundation of a great nation, and of thus creating a great purchasing power for the commodities of this country. These colonies were begun about 1606. The last colony, Georgia, was founded in 1732. They owed nothing to the English nation as a nation, or to the government as a government, but they owed everything to the English people. From them they derived their language, their institutions, their manners, their literature, their laws, and their character. Thus they grew up, in fact, to be a great nation. Inspired and governed by the feelings of Englishmen, they took offense at what they deemed to be oppression. They resented that oppression, and determined to throw off the yoke of England. At that time England had the misfortune to be governed by a narrow-minded bigoted monarch, who resolved to crush the discontent of the American people. He waged a war which excited animosity between us and them. Instead of allowing them to separate peaceably from this country, they were divided from us by arms, and hatred was the consequence. Now, not only did the American people establish their independence, but they also established two points of international law, which I think of very great importance at the present time. The first was that any body of people, determining to throw off their allegiance, were justified, if they had the power, in so doing; and we acknowledged that to be a principle of international morality by the treaty which we made in 1783. The second point was very remarkable. France interfered in that dispute, and France then bore the same relation to our revolted colonies that we do now to the Confederate States of America. In making peace with France we assented to another rule of international morality sometimes called international law. Although we had declared war against France for recognizing the rebellious colonies as independent States, we admitted when we made peace that France was justified in acknowledging them before we ourselves did so. These two points of international law are, as I think, of the highest importance at this time, and I bring them to bear against the Northern States of America, for, though other nations may dispute them, at least they cannot. Then began that great race of prosperity which the nation called the United States of North America ran after it became independent. There is one very curious thing in the history of this people, which is generally passed over with too little notice. After the war in 1816, the North American States entered on their course of protection. The Northern States of the Union resolved to make the Southern States, the great producers of the continent, subservient to themselves. They established a tariff which threw the whole carrying power of the continent into their own hands and compelled the Southern States to be the purchasers of all manufactured commodities from the North. Henceforth there grew up a dispute between the northern and southern portions of the Union. In 1827 an attempt was made by the South to relieve themselves from the yoke of the tariff, which failed by a very small number in the House of Representatives and a still smaller number in the Senate. Then sprang up in the mind of the Southern States a hope of making slavery the means of relieving themselves from that burden. They determined in every case to make slavery and slave States the point to which they would direct their attention, their object being to free themselves from the thralldom of the North, and to acquire the rights of free trade. This grew from day to day, from month to month, from year to year, till at last secession came. At first some were misled by the talk of the North. In spite, however, of the literature of the North, in spite of the obloquy which they made Europe believe attached to the secessionists, in spite of the boasting of the North that she only to put forth her arm to crush the South, the truth became apparent. "Ninety days" was the talk, and men in England and in Europe believed the truth of the assertion that the war would be over in that time. Ninety days went past, and no conquest took place. Ninety days were added to that, and at last two years have rolled over us. That is the real, true history of the secession and its results at the present moment. Now comes the question—what are we to do? I say at once we ought to acknowledge the independence of the South; and why? First, because they have a right to claim it. They are a gallant people, who, with a very small force, have resisted and conquered the North. They have rolled

back the tide of invasion. It is not Richmond that is now in peril, but Washington, and if there be terror anywhere it is in the minds of the merchants of New York. I see my honorable and learned friend, the solicitor general, in his place, and I ask him if he can refute this statement of international law, that when a people, having determined to be free, have proved their power of resistance, we are justified in acknowledging their independence, and that, as Sir James Mackintosh said, there would be no *casus belli* in our doing so. Well, then, shall we acknowledge the South? I say *aye*—first, because in point of fact they have vindicated their freedom; and next because it is our interest. At the present moment there is exhibited a phenomenon never seen in the history of mankind. Ten millions of civilized men, producing three of the great necessary commodities of Europe—cotton, sugar, and tobacco—are thrown upon the world for customers. They have cut their connection with the North. They have said to England, "We are here producing all you want in the shape of cotton, producing nearly all you want in the shape of sugar and tobacco. Thousands, nay, nearly a million, of your people are suffering from the want of these very commodities which we can supply. We offer ourselves to you as customers." Are we not prepared to accept that offer? What is it that prevents our recognizing these States? I look at the treasury bench, and sorry I am to observe the absence of the noble lord who is really the government. I ask those honorable and right honorable gentlemen, what is it that is in the minds of those who want us to refrain from accepting this great boon to England and doing this great justice to America? We are met by the assertion, "Oh, England cannot acknowledge a State in which slavery exists." Indeed, I ask, is that really the case, and is any man so weak as to believe it? Have we not acknowledged Brazil? Are we not in constant communication with Russia? And is there not slavery in both those countries? Moreover, does anybody believe that the black slave would be at all improved in his condition by being placed in the same position as the free black in the North? I ask whether the North, hating slavery, if you will, does not hate the slave still more? (A few "noes" drowned in cheers.) I pity the ignorance of the gentleman who says "No." The blacks are not permitted to take an equal station in the North. They are not permitted to enter the same carriage, to pray to God in the same part of the church, or to sit down at the same table with the whites. They are like the hunted dog whom everybody may kick. But in the South the feeling is very different. There black children and white children are brought up together. ("No!") I say it without fear of contradiction from any one whose contradiction is worthy of notice. In the South there is not that hatred, that contempt of the black man which exists in the North. There is a kindly feeling in the minds of the southern planters toward those whom England fixed there in a condition of servitude. England forced slavery upon the Southern States of America. It was not their doing. They prayed and entreated England not to establish slavery in their dominions, but we did it because it suited our interests, and the gentlemen who now talk philanthropy talked the other way. (Laughter, and a cry of "They were not living then.") No, but their ancestors were, and we have the same class now-a-days, with the same sort of cant and hypocrisy. Every man who has studied the question will distinctly understand the difference between the feeling of the northern gentleman and that of the southern planter towards the black. There is a sort of horror, a sort of shivering in the northerner when he comes across a black. He feels as if he were contaminated by the very fact of a black man being on an equality with him. That is not the case in the South. I am not now speaking in favor of slavery. Slavery to me is as distasteful as it is to the honorable member for Birmingham; but I have learnt to bear with other men's infirmities, and I do not think every man a rogue or a fool who differs from me in opinion. But, though I hate slavery, I cannot help seeing the great distinction between the condition of the black in the North and his condition in the South. I believe that if to-morrow you could make all the blacks in the South like the free negroes in the North, you would do them a great injury. The cry in the North in favor of the black is a hypocritical cry, and to-morrow the North would join with the South and fasten slavery on the necks of the blacks if the South would only re-enter the Union. But the South never will come into the Union, and, what is more, I hope it never may. I will tell you why I say so. America, while she was one, ran a race of prosperity unparalleled in the world. Eighty years made the republic such a power that if she had continued as she was a few years longer she would have been the great bully of the world. Why, sir, she

"—bestrode the narrow world
Like a Colossus; and we petty men
Walked under her huge legs, and peeped about
To find ourselves dishonorable graves."

As far as my influence goes I am determined to do all I can to prevent the reconstruction of the Union, and I hope that the balance of power on the American continent will in future prevent any one state from tyrannizing over the world as the republic did. Could anything be more insulting than her conduct towards us? Yet we who turned upon Greece—we who bullied Brazil—we crawled upon our bellies to the

United States. They could not treat us contemptuously enough to raise our ire; but at last, when the secession took place, we plucked up courage and resented the outrage upon the Trent. I say, then, that the Southern States have vindicated their right to recognition. They hold out to us advantages such as the world has never seen before. I hold, besides, that it would be of the greatest importance that the reconstruction of the Union should not take place. Then comes the question, has the time arrived for recognition? I want honorable gentlemen to tell me why the time has not arrived. At the present moment a large portion of our population are suffering in consequence of the cotton famine. That is one reason why the time has come for the recognition of the South. Next I say the time has come because the Southern States have vindicated their right to be recognized. Moreover, they offer to us a boon such as the world has never known; but they are being driven to be a manufacturing people. They are making their own guns, and if you keep them much longer in their present condition they will produce their own cotton and woolen goods. Thus interests will grow up which they will be obliged to protect, and we shall have the protective system introduced into the Southern States of America. That is a matter deserving of attention—a matter which any statesman, if I could see one, would take into his consideration. Such is the state of things at the present moment. The South offers to us perfect free trade; but if we allow this contest to go on; if we cower, as we have done hitherto, before the North, the southerners will soon become a manufacturing population, and the boon will be withdrawn from us. But, if they ought to be recognized, and if the time has come, is the mode I propose a right one? The mode I propose is that this House should pray the Queen to enter into communication with the great powers of Europe with a view to the recognition of the South. Now, the great powers of Europe really mean France. No other power, with the exception of Russia, has a fleet that we need think about; and we know that Russia is not in a position at present to do anything. France is the only power we have to consider; and France and England acknowledging the South, there would be an end of the war. Here I am obliged to enter into a sort of personal history. I hope the House will excuse me for doing so. What I am going to say is that I know certain things about the state of the mind of the great French ruler which I am authorized, that is, I am permitted, to lay before this House. I was met in the lobby outside some days since by an honorable and learned friend of mine, who said to me: "You propose that the House should address the Queen, to ask her to enter into a negotiation with the great powers of Europe. Now, I have heard to-day, on very good authority, that the mind of the French ruler has changed; and if Lord Palmerston can come down to the House and say so, what becomes of your motion for the recognition of the South?" I acknowledged to my honorable and learned friend the force of his statement, though, like the Scotchman about the fish, I doubted the fact; therefore, I wrote to my honorable friend, the member for Sunderland, knowing that he had obtained authority to write to the French Emperor whenever he wanted to see him; and I said to him in effect: "Suppose, for the purpose of ascertaining whether this rumor be true, we go across and ask at once for an audience." For, sir, I know the treasury bench right well. I know they are wonderfully expert at circulating rumors; indeed, when they have an object in view, there is hardly any rumor they will not circulate. My letter to the honorable member for Sunderland got to Paris, and subsequently we had the audience asked for. I am now going to make a statement, which the under-secretary for foreign affairs may think somewhat surprising; but it is true for all that. The Emperor of the French said, and he gave me authority to repeat it here, "As soon as I learnt that that rumor was circulated in England, I gave instructions to my ambassador to deny the truth of it. Nay, more, I instructed him to say that my feeling was not, indeed, exactly the same as it was, because it was stronger than ever in favor of recognizing the South. I told him also to lay before the British government my understanding and my wishes on this question, and to ask them again whether they would be willing to join me in that recognition." Now, sir, there is no mistake about this matter. I pledge my veracity that the Emperor of the French told me that. He told me that instructions had been sent to Baron Gros. And to tell me that the British government does not know that that has occurred must mean some evasion, some diplomatic evasion. It cannot be the truth. And if there be contradiction between the witnesses, I pledge my veracity for what I state. I do not believe the world will doubt my word, and I pledge my word that that is the truth as far as I am concerned. And, what is more, I laid before his Majesty two courses of conduct. I said: "Your Majesty may make a formal application to England." He stopped me and said: "No; I can't do that, and I will tell you why. Some months ago I did make a formal application to England. England sent my dispatch to America. That dispatch, getting into Mr. Seward's hands, was shown to my ambassador at Washington. It came back to me, and I felt that I was ill treated by such conduct. I won't, (he added,) I can't subject myself again to the danger of similar treatment. But I will do everything short of it. I give you full liberty to state to the English House of Commons this my wish, and to say to them that I have determined in all things," and I will quote his words, "I have

determined in all things to act with England, and more particularly I have determined to act with her as regards America." Well, sir, with this before us can the government be ignorant of this fact? I do not believe it. With this before them are they not prepared to act in concert with France? Are they afraid of war? War with whom? With the Northern States of America? Why, in ten days, sir, we should sweep from the sea every ship. ("Oh, oh.") Yes, there are people so imbued with northern feeling as to be indignant at that assertion. But the truth is known. Why, the Warrior would destroy their whole fleet. Their armies are melting away; their invasion is rolled back; Washington is in danger; and the only fear which we ought to have is lest the independence of the South should be established without us. There is another observation which I have to make, and which I wish again to present to the minds of such honorable gentlemen opposite as are capable of understanding it. It is this: A large portion of our manufacturing population have been for some months living upon charity. Now, there is very soon acquired a habit of idleness; and I have learnt from Lancashire that at the present time an unwillingness to labor is creeping upon the people, and if we carry them through the coming winter in idleness we do not know what may be the consequence to our manufacturing population. Again, sir, I will quote the words of his Majesty the Emperor of the French, and they are very remarkable words. He said: "I am afraid of the coming winter with respect to my manufacturing population." And my honorable friend, the member for Sunderland, said: "Sir, we do not dread the winter, although we know that great misery must of necessity be entailed upon our manufacturing population if the cotton famine continue; but we, sir, desire to avert from our countrymen the calamity that must arise from the continuation of that famine." Now, I wish the noble lord were here, for I want to make this suggestion: Hitherto the sufferings of the Lancashire operatives have been borne with wonderful patience and fortitude. They have believed that the misery entailed on them has not been caused by any conduct of the government. It was inevitable. It came upon them in spite of the government, and the government had nothing to do with it. An improved knowledge and civilization have led to this result as far as they are concerned; that, seeing that the government was not to blame, they have not, like ignorant people in former times, turned their anger against the government. But, sir, if the origin of their misery was not the work of the government, will they not come to think that the continuance of it may be the work of the government? Their patience, because the government was not to blame, will no longer endure when they find, as they will now find, that the continuance of their suffering is the result of the folly of the government. I have to-day had letters from Lancashire which say that in thirteen of the great towns there have been large meetings in favor of the recognition of the South; that that has been carried by an immense majority of ten to one; and that there will be no end to the petitions sent up to this House for that measure. When these working men look around their desolate houses and see that they have no labor wherewith to support their children, and when they can point their finger to the noble lord at the head of the government, and say, "He is the cause of our misery," do not mistake the result upon the English mind. That popularity which has conquered all things will sink at once into the dust; and, like that amazing fabric of commercial prosperity in America, which was immediately broken to pieces by secession, the popularity of the noble lord will topple down a gigantic ruin, and he and his small friends will be swept from their seats. I have no doubt that I have now well nigh exhausted the patience of the House. I have stated as shortly as I could the reasons which have induced me to make this application to the House. And now I will briefly review what I have said. At the present moment there is offered to us a great advantage. If we take time by the forelock that advantage will be given to us, and we shall be a much greater people, and London will be the imperial city of the world. But if we abstain from availing ourselves of this opportunity it will go away at once to France. The cry about slavery is hypocrisy and cant. We shall do no harm to the black man if we adopt my resolution. And I pray the House in all calmness to consider this question, and, as they are men of honor, justice, and benevolence, to grant me the motion which I now make.

Motion made, and question proposed,

"That an humble address be presented to her Majesty, praying that she will be graciously pleased to enter into negotiations with the great powers of Europe for the purpose of obtaining their co-operation in the recognition of the independence of the Confederate States of North America."—(Mr. Roebuck.)

LORD ROBERT MONTAGU said, that the honorable and learned member (Mr. Roebuck) who had just resumed his seat had stated that he expected to be covered with obliquy by those who opposed him, because that they considered themselves as the salt of the earth, and far superior to every one else. He (Lord R. Montagu) took this expression as an allusion to himself; and as he thought that this criticism might be founded in some reason, he had determined to study the mind of the honorable and learned member, and learn humility from his example. What, then, was his surprise when he heard the many proofs which the honorable and learned member had let fall of his pride and

scorn of others. He (Lord Robert Montagu) had collected a few of these *acroamata*. The honorable member for Brighton had chanced to smile while the honorable and learned member was speaking; then the honorable and learned member suddenly turned upon him and said, "Ah! that is the laugh of ignorance." Presently, he broke out with some acerbity and fierceness against the honorable member for Huddersfield, saying that "he pitied him for the slough of ignorance in which he was sunk." As he proceeded, he enlarged the sphere of his sarcasm and obliquy, and, attacking the whole treasury bench, he had said that "the noble viscount was the government, and that all his colleagues were absolutely of no account." He had still acquired courage as he went on, or else had opened his mind with less caution and reserve; from the treasury bench his eye glanced round the House, and he said that "there was not a statesman in the House—he could not see any." Not even content with that, he had asserted that "any one who contradicted him was not worthy of notice," and that honorable members "never thought properly of anything." But of himself the honorable and learned member had stated that he spoke the mind of the Emperor of the French; that there was only one great power in Europe, and that he (Mr. Roebuck) was the exponent of it. He (Mr. Roebuck) had been dazzled by the brilliant diadem on imperial brows; he had crooked the knee to imperial majesty, and caught the honeyed accents from imperial lips; he had searched the inmost recesses, and been admitted to the mysterious depths of an imperial breast, and had now come forward to reveal to an "ignorant House of Commons" the dark secrets which he had found hidden there. He (Mr. Roebuck) despised honorable members as degenerate Englishmen. Degenerate? He thought, then, that they had descended from some high standard of morality. But the honorable and learned member did not think that he, too, had so descended, or was so degenerated; for if so, his opinion would not be better than the opinion of those whom he despised; his judgment could not be more depended on than theirs. No; the honorable and learned member regarded himself as the pure primeval pattern of man; as the genuine original type of *civis Britannicus*. Yes; from the clear, cold empyrean of his virtue—from the topmost pinnacle of his superabundant excellence, he had looked down on honorable members, and smiled sarcastically at them as they were groping in the darkness of ignorance, as they grovelled in their crimes, and were lost in the mazes of error. He (Lord Robert Montagu) could not, however, forbear to congratulate the honorable and learned member on the aristocratic tendencies and despotic predilections which he had just evinced. The former he (Lord Robert Montagu) confessed that he shared, the latter he utterly repudiated. Not less than the honorable and learned member was he partial to the South; not less than the honorable and learned member did he sympathize with the noble struggle which the southerners were carrying on for their independence; nor did he yield to the honorable and learned member in a desire to see that independence accomplished. His despotic predilections, however, he (Lord Robert Montagu) did not share; he did not run to an emperor at Vienna, nor did he bow the knee to an autocrat in France to know what he was to do in the British House of Commons. There were many in the House who were both able and willing to give better advice; he had often found them ready to give counsel, and had profited by their suggestions. He had come down to the House armed in the cause of truth, and prepared to pay a just tribute to the speech of the honorable and learned member. He had now found that these two things were utterly inconsistent and incompatible. For he had looked for demonstration, but had been given vapid declamation; he had expected arguments, and had been foisted off with sneers, sarcasms, and rhetorical tropes. In fact, he had hoped that the honorable and learned member would have succeeded in making out a good case for the South; he had trusted that his own amendment might be beaten, and that the House would have been shown that it was both their duty and their interest to recognize the southern confederacy. What was the speech (he could not call it argument) of the honorable and learned member? He began by sketching a history of the first settlement of the colony in America, prior even to the year 1732. Then, passing to the war of independence, he uttered plenty of the cant of revolution, called our own King, George III., "a narrow minded, bigoted monarch." Then came his logic. Because that the United States had been successful in achieving their independence, the honorable and learned member had said that they had "established a great point in international law," namely, that a state may throw off the rule of its constitutional governors whenever it likes, and may separate from the mother state whenever it can. He proceeded to say, in like manner, that because the French had assisted them in obtaining that independence, "therefore another great principle had been established in international law," namely, that all nations have a right to do the like. Had ever such logic been heard in that House? In the next place, the honorable member had vouchsafed certain all-sufficient reasons for recognizing the Confederate States, namely, because they had themselves almost attained their object. Because the prize was almost within their grasp, therefore, we must step in and snatch it from them. The honorable and learned member had said: "It is not Richmond that is threatened now, but Washington;" therefore let us step in and screen Washington from danger. Was that friendly to the southern States? Would

it be generous on our part? Much rather would he (Lord Robert Montagu) imitate Edward III, who had refused to come down and help his son in the battle, because that the prince was likely to gain the victory alone, and the noble minded king would not defraud him of a scrap of the glory. Moreover, this would take from the South all the weight, the stability, the security which they would enjoy if they achieved their independence alone. The Federal States would always feel that the South had not been able to gain freedom for itself, and might, therefore, be again reconquered whenever a fitting opportunity offered itself. There was another point in the speech of the honorable and learned member to which he must advert. In private life they always endeavored to get rid of feelings and divest themselves of prejudices, in order that their judgment might be clear and unbiassed; they sought to sever themselves from their passions in order that the eye of reason might not be blinded. Was this not much more necessary on an important occasion like the present, which involved the fate of millions, which concerned our honor and integrity of conduct? And yet, what had the honorable and learned member done? He had come down with irritating topics, and had endeavored to stir up their feelings, to arouse passions, to create prejudices, to blind their minds and pervert their judgments, and prevent them from arriving at any just conclusion. He had exclaimed, "Could anything be more insolent than the conduct of the North to us?" This was the old sophistical notion—"Justice consists in doing to others as they have done to us"—so long ago refuted; this was the doctrine—"an eye for an eye, and a tooth for a tooth"—so long ago condemned. Should we then really do wrong because we had been insulted? If so, we should thereby "establish another new point in international law." Then again, he had told a long story about a dispatch which had been shown to Mr. Seward, and had said that for this reason the Emperor Napoleon would not condescend to communicate directly with our government. He (Lord Robert Montagu) had heard of this a year ago, and had been told that the truth was this: the French had been playing a double game, pretending a friendship for the North, and asserting that it was England who had kept them back from proving their friendship. Lord Russell, therefore, to prove the duplicity of the French government, had ordered the dispatch to be shown to Mr. Seward. The Emperor, no doubt, refused to make to the British government the communication which the honorable and learned member had borne for him; for the Emperor knew very well what sort of answer he would get. The Emperor had, however, found a ready and willing tool, and had determined to make a catpaw of the honorable and learned member. "The Emperor dreads the coming winter," said the honorable and learned member! Just so; and therefore the honorable and learned member may pull for him the chestnuts he so much desires, out of a fire too hot for imperial hands to bear. He (Lord Robert Montagu) felt himself in rather an awkward predicament; he was somewhat like General Hooker after crossing the Potomac—he found an army and fortress in his front, but on looking round he found another army with the river in his rear, so that he was forced to fight, and could neither advance nor retreat. The honorable member for Dungarvan had heaped up an enormous amendment in his (Lord Robert Montagu's) rear; a regular stockade of a motion, which it was impossible for him to cut his way through. It referred "with the deepest regret," to "the terrible waste of human life which has characterized the lamentable struggle;" it is "desirous to prevent the further effusion of blood;" it "calls on her Majesty's government, in the name of humanity (whatever the name of humanity may be,) and the interests of civilization," to "recommend an immediate armistice;" and so forth. Now, he mistrusted any sudden desire to stop the effusion of blood, or the hasty adoption of this humanity argument, when he remembered that our civil war had lasted ten years; and that the war of independence with our North American colonies had lasted seven years, even though they were assisted by France; and that the war of independence of the Spanish South American colonies had lasted no less than fourteen years. Was it, moreover, a duty to interfere in order to stop the effusion of blood? If it be a duty, then it was always obligatory upon us, whether against Russia, or France, or China. In reading Canning's speeches the other day, he had been struck by an expression of that great statesman which bore directly on this point, namely, that the "golden rule" of private life was the golden rule of politics also. For as in private life he that never swerves from the rule of doing to others as he would like them to do to him, is thereby kept free from all those vexations and worries and quarrels and bickerings which are always besetting others; so also the state which observes the same rule with regard to other states will escape wars, and costly interventions, burdensome taxes, and the weight of loans, distress, hardship, and scarcity of provisions. The case of the United States to-day might be their own to-morrow; it was actually our own condition but yesterday. Had they not a Sepoy rebellion? What would they have said if the United States, or Russia, or France, or some other power had interfered to assist the Sepoys against them? Would they not have denounced the nation that thus intermeddled, and have told them, with a feeling of just indignation, that it was no business of theirs? Some years ago there were fears entertained about Ireland, and it was merely surmised that America was going to help the Irish; the whole of this country was indignant and agitated by a most excusable rage and anger at the bare suspi-

cion of such a thing. But now they were called upon to do that which they had denounced on the mere supposition that it was about to be done by others. They had then recorded a curse in heaven against any who should do what they now were asked to perpetrate. True humanity would urge them to promote the welfare of the whole Anglo-Saxon race, without indulging their prejudices in favor of North or South, or gratifying their passions because of bygone insults. They should endeavor to establish peace so that every point should be settled which might render possible a renewal of the civil war in future years. He believed that an armistice would perpetuate feelings of rancor and preserve seeds of discontent; it would reserve points of quarrel which would otherwise be spent; it would keep latent various matters now at issue. Those parties at war must be judged like the rest of humanity; and they all knew from their school days that when combatants fought out their quarrel, they soon shook hands again and were friends; while those whose quarrel was repressed bore deadly hate and nourished a feud. Besides, how was an armistice to be enforced? Did the honorable member mean to say that they should have a war at once to carry that armistice into effect? It would, moreover, be little use to proclaim an armistice unless a basis of mediation were definitely agreed on. Had such a basis been suggested? During an armistice the two parties keep their arms in their hands; how could they define the limits within which those parties should confine themselves? The limits now were most uncertain; the North held New Orleans and the Mississippi; the South held parts of Missouri, Kentucky, and Maryland. The South claimed the States to the west of the Mississippi, but yet the authority of the North still prevailed there. He did not see, therefore, how they could address themselves to the proposal of an armistice. And would such a course really stay the effusion of blood, and not rather increase it? If we recognized the South, the North would infallibly declare war upon us; our own blood would then be shed in addition to that of the South, and also of the many recruits who had left this country for the North. But if the honorable and learned member meant war, then let war be deliberately declared; let them not profess to recognize merely, let them not deceive the people of the United States and our own nation also by copious professions of amity and friendship. Why should the honorable and learned member not say what he really meant? Because he knew that war would be unpopular, because he and all the world were aware that war meant heavy burdens and onerous taxes. The honorable and learned member would, indeed, do well to beware of war; not because we should have to operate at a distance of three thousand miles; nor because our shipping in every nook and corner of the world would have to be protected from American privateers; nor yet because the guards, so sparsely scattered over Canada, would be taken prisoners; but because in such a war we should be arrayed against our own flesh and blood. The suffering and distress caused by the war in the cotton districts of this country had been alluded to by the honorable member; and the remedy and prophylactic, the nostrum and antidote of the honorable member, for all the want and hardship in Lancashire, was the recognition of the Southern States; but could any man believe that the mere recognition of the Southern States, without a war, would bring over a single bale of cotton? or that recognition with war would lessen the hardships, diminish the taxes, or stop the effusion of blood? Before entering on the discussion of any matter, it was always of primary importance to have a clear conception of the terms that were used; unless these were defined, confusion was sure to pervade the whole discussion, and no conclusion could possibly be arrived at. There were only three ways in which a foreign state could be said to interfere between two conflicting parties. First, when it was with the full and free consent of both parties to the conflict; it was then called either mediation or arbitration. Secondly, when it was made against the wishes of both; and thirdly, when it was made with the consent of only one belligerent. First, with respect to mediation and arbitration. A mediator merely gave advice and offered counsel; and both parties had agreed to listen, although they did not pledge themselves to follow it; and it was known that good counsels were generally spurned where listeners were prejudiced. An arbitrator, on the other hand, pronounced a decision which both parties had previously bound themselves to carry out; they had pledged themselves to abide by his judgment. The right to interfere, whether as a mediator or an arbitrator, did not rest with the intervening party, but he must be selected by the parties to the conflict, who had confidence in the known justice and integrity of the arbitrator. Secondly, when it took place contrary to the wishes of both parties, it was called intervention. Intervention meant to come between—to interpose by force; and therefore was an act hostile to both. Thirdly, where it took place with the consent of one and against the wish of the other, it amounted, in fact, to espousing the side of one and declaring war against the other. The word "recognition" was not mentioned by any of the old writers on international law; it was the manufacture, or rather the phantom, of modern times. Mr. Canning had stated, in 1823, that "the law of nations was entirely silent on this point;" yet he attached the general meaning to the word and defined the two senses of it very clearly. He said: "If the colonies say to the mother country, 'We assert our independence,' and the

mother country answers, 'I admit it,' that is recognition in one sense. If the colonies say to another state, 'We are independent,' and that other state replies, 'I allow that you are so,' that is recognition in another sense of the term. That other State simply acknowledges the fact, or rather its opinion of the fact."

This latter he treated as worth nothing, except there accompanied it "a treaty of alliance and co-operation." For, he continued:

"The simple recognition by any neutral power * * * could have no such effect as tranquillizing the state, and establishing and confirming its independence."

Sir J. Mackintosh had likewise said:

"The first [sense of the term recognition,] which is the true and legitimate use of the word 'recognition,' as a technical term of international law, is that in which it denotes the explicit acknowledgment of the independence of a country by a state which formerly exercised sovereignty over it. Such recognitions are renunciations of sovereignty—surrenders of the power or of the claim to govern."

With regard to the other meaning of the term, which he called "virtual recognition," he had said:

"It implies no guarantee, no alliance, no aid, no approbation of the successful revolt, no intimation of an opinion concerning the justice or the injustice of the means by which it has been accomplished. These are matters beyond our jurisdiction. It would be an usurpation in us to sit in judgment upon them. As a state, we can neither condemn nor justify revolutions which do not affect our safety and are not amenable to our laws."

The resolution of the honorable member for Sheffield amounted, therefore, to a desire for an alliance to go to war with the North. He hoped to show, on the contrary, that we had no right to recognize the South, or to intervene in the quarrel in any way; further, that alliances such as the honorable member proposed had always been productive of mischief and misunderstanding between the allies themselves; and, lastly, that intervention would be injurious both to this country and to the Confederate States themselves. An expression of thanks was due to the writer in the *Times*, well known to be a lawyer of repute and authority, whose letters signed "Historicus" had placed in a clear light what otherwise would have been a matter of doubt, mystery, and perplexity. According to that gentleman, while the contest for government, or, in other words, rebellion was going on in a country, there were only two possible courses open to other nations—either to remain neutral, in which case the mother country was to be regarded as a sovereign state, while belligerent rights were possessed by the other side, but no other rights whatever; or else war must be declared which might be either a forcible intervention against both parties, or else (as is more generally the case) it consisted in espousing the cause of the one party and waging war on the other. Wheaton, in his standard work on international law, had laid down that—

"Until the revolution is consummated, while the civil war involving a contest for the government continues, other states may remain indifferent spectators of the controversy, still continuing to treat the ancient government as sovereign, and the government *de facto* as a society entitled to the rights of war against its enemy; or may espouse the cause of the party which they believe to have justice on its side."

But some honorable members perhaps might say, "Why not remain neutral and yet recognize?" He thought he had already shown that these two things were incompatible: yet he would inquire further into the objection. Let him ask what was the meaning of neutrality. The right honorable gentleman the Chancellor of the Exchequer, in 1859, gave a definition so concise and clear that he would take the liberty of quoting his words. Speaking of Mr. Canning, he had said:

"The impartiality of his neutrality would have been violated if he had offered suggestions in the spirit of party; the impartiality of his neutrality would have been violated had he interposed by any underhand means."

And speaking of the neutrality on which her Majesty's government had acted, he added:

"Its limit is that we should refrain, not from entertaining our own opinion, but from giving effect to it, either by manifestations in this House or by diplomatic action, otherwise than the public law of Europe may permit, or opportunities shall be fairly opened."

And now, with regard to recognition, he would quote a writer on international law, a statesman of this country, and a statesman of the Southern States. Dr. Phillimore (vol. II, p. 15) had declared that—

"Two facts should occur before this grave step be taken, whereby the neutral power becomes the ally of one of the hitherto belligerent parties—first: the practical cessation of hostilities on the part of the old state; * * * second: an absolute, *bona fide* possession of independence."

And quoting the very precedent to which the honorable and learned member had referred, the recognition by France of the independence of our American colonies, that writer said, Never was there a war declared on juster grounds than that commenced

by George III, on the recognition of the independence of those colonies by the French. Lord Liverpool had held language much to the same effect. He said :

"With regard to the question of the recognition of independence, they both agreed that it was to be considered on two grounds—the first, of right; the second, of expediency. That where no right existed there could be no expediency, was an inference in which they both agreed. * * * There could be no right while the contest was actually going on. * * * The question ought to be, 'Was the contest going on?' He for one could not reconcile it to his mind to take any such steps so long as the struggle in arms continued undecided."

President Jackson, a native of South Carolina, to whose opinion the confederates would probably attach importance, had laid it down in his message of December 21, 1836, that—

"The acknowledgment of a new State as independent and entitled to a place in the family of nations is at all times an act of great delicacy and responsibility, but more especially so when such State has forcibly separated itself from another, of which it had formed an integral part, and which still claims dominion over it. A premature recognition under these circumstances, if not looked upon as a justifiable cause of war, is always liable to be regarded as a proof of an unfriendly spirit."

These quotations, although but a tithe of what might be given, would suffice to show that recognition, where it was not the mere acceptance of an independence already acknowledged by the mother country, amounted to intervention and an act of hostility and war. Lawyers attached much weight to precedents; he supposed, therefore, that he must discuss all the precedents which bore upon this matter. First, there was the recognition of Hungary, attempted by the United States, in 1849. The rebels were in full possession of all the territory. Every one of the Austrian troops had been driven from Hungary, and Austria had not a man left to govern the country. The United States thereupon sent over Colonel Dudley Mann to Kossuth, with full powers to recognize Hungary as an independent state. Yet the whole of Europe, with one consent, reprobated the action of the United States, and the Americans themselves had not attempted to justify their conduct. The next case was that which the honorable member had referred to. On the 13th of March, 1778, the Marquis de Noailles informed King George that the French government, deeming our colonies to be virtually independent, had recognized them as such, and concluded with them a treaty of amity and commerce. It was quite true that at the time a treaty of alliance offensive and defensive had been concluded, but the fact was not known then, and was a secret till long afterward. Four days after that communication, on March 17, King George III recalled his ambassador from France, and sent the French ambassador his passports, and Parliament was informed by the Crown that this step had been taken in consequence of the French ambassador's communication. The "justifying memorial" drawn up by Gibbon, and published in the *Annual Register* for the year 1779, stated the *gravamen* to be that France—

"Is content to maintain that the revolted colonies enjoy, in fact, that independence they have bestowed on themselves. * * Under such circumstances it is impossible, without insulting in too gross a manner both truth and reason, to deny that the declaration of the Marquis de Noailles ought to be received as a true declaration of war."

The memorial also quoted the expression of King George III, that this recognition was "an act of hostility, a formal and premeditated aggression." The next precedent was that in the war of the Spanish American colonies with the mother country. That war began in 1810, and, after it had continued for eight years, the people of Buenos Ayres, who had then an extensive trade with the United States, applied to the United States government to be allowed to send a consul to Washington, seeing that there was an American consul at Buenos Ayres. But President Adams replied that he could not permit it, because it would amount to a recognition of their independence, whereas the continued residence at Buenos Ayres of a United States consul, who had been accredited to Spain before the revolution, implied no recognition of any particular government. There was another precedent on the same occasion which was furnished by our own conduct. At the Congress of Verona, Great Britain and the United States protested against the right of the allied powers to interfere between Spain and her colonies. Mr. Canning went even so far as to declare that he would consider it a cause of war if any power ventured to recognize them. In the year 1824, after the contest had been going on for fourteen years and every Spanish soldier had been removed, Mr. Canning wrote to our minister in the Peninsula stating that his Majesty's government would not anticipate, in the matter of recognition, the mother country herself, and that they had no right to recognize the revolted colonies before the mother country should lead the way in that recognition. Yet, at this time, Spain had abandoned all efforts in Colombia and Buenos Ayres, and had nearly given up the contest in Chili and in Mexico. On the 15th of January in that year a case had occurred very like what had just taken place in that House. Sir J. Mackintosh presented a petition for the recognition of the South American republics. That petition was from the merchants of London, while the petition presented by the honorable and learned member for Sheffield was only from

a few people gathered in the market place at Oldham. The petition of Sir J. Mackintosh was presented after a fourteen years' struggle, and when every Spanish soldier had been driven out of the country; that of the honorable and learned gentleman had been presented after a two years' war, and when the resources of the South were strained to the utmost by the northern arms. Sir J. Mackintosh's petition, moreover, recited the fact that two years before, in 1822, an act had been passed by the House of Commons to permit and legalize a trade with the South American states. And, therefore, even apart from the great difference between the two men, Sir J. Mackintosh's case was infinitely stronger than that of the honorable and learned member for Sheffield. Mr. Canning, in his reply, stated that twice had Spain proposed a Congress to treat on the subject, but that he had twice refused, holding that it would be "neither just nor generous" to recognize them until Spain had done so beforehand. In 1825 Buenos Ayres and Chili were recognized on the ground, according to Mr. Canning's speech on the address, that, for many years, there had not been a Spanish soldier on the territory of Buenos Ayres, and that "the first necessary condition of recognition by a foreign power had long existed in that state; its soil was free." Colombia was in a like condition; yet, Mr. Canning had refused to recognize her, because she had sent an armed force against Peru, which might have the effect of bringing back the Spaniards into the heart of Colombia. She, therefore, could not yet be recognized as independent. He passed now to the second point, namely, that an alliance to intervene always ends in quarrels between the allied powers themselves: that union and association for such purposes always resulted in disunion and bickering. This was a truth which could be proved only by actual facts and events. That was the case in regard to Belgium. In the year 1830 that country did not pretend to have achieved its independence; in fact, the Dutch were about to reoccupy Brussels when the conference of London proposed to create a kingdom of Belgium. Wheaton stated that the King had invited a conference of the five powers to determine "how the future independence of Belgium could be combined with the stipulations of existing treaties." They met on the 20th of December, 1830, and signed a protocol determining the basis of the intervention and proclaiming an armistice. But both the revolutionary government and the King of the Netherlands repudiated the settlement proposed by the five powers. The five powers then immediately quarrelled among themselves. England and France sided with the revolutionists, while Russia and Prussia took part with the King of the Netherlands. Thereupon the Prince of Orange fought a battle and defeated the Belgians. Instantly France and England came to the rescue. But Russia and Prussia threatened us with war; and thus nine months of war was the result of intervention in the cause of peace. In October, 1831, a "final settlement" was agreed upon, which proved, upon trial, to be by no means final. A year afterward, in October, 1832, a convention was concluded, between France and England, to force the evacuation of Antwerp; we sailed into the Scheldt, while France invaded Belgium. Russia and Prussia menaced us with war; but peace was eventually concluded in May, 1833. Then take the case of Greece. The insurrection broke out in 1821. Greece had fought for six years, and had by no means achieved her independence; nay, the Turks were about to reduce them to submission, when England, France, and Russia resolved to intervene. Then occurred that intentional accident at Navarino. In 1828 the French invaded Greece in order to expel the Turks. And then, from 1828 to 1833, the patriots quarrelled among themselves, flew at each other, cut each others' throats, and the whole land was a scene of blood and carnage. All this time Russia was playing her own game and advancing on Constantinople. But England entered into a secret treaty with Austria (against her ally, Russia) to protect the integrity of Turkey. He had the authority of Alison for asserting that orders had been sent out to the English admiral in the Levant to attack the Russian fleet when the treaty of Adrianople was concluded and peace established. Thus this alliance to intervene in the cause of peace had been the origin of twelve years of bloodshed. He need not mention the alliance to intervene in Syria, for the House remembered the bad blood which was stirred up, and the reports which were current that the French had sent over rifles to the Maronites and printed an incendiary paper vilifying us, which they disseminated throughout Syria. Neither need he allude to the jealousies which were engendered by the alliance in China. Then, again, there was the case of Mexico. We intervened, together with France and Spain; but, before long, we found the only thing we had to do was to get out of the matter as quickly as possible; so we had retired with more speed than dignity. It might be said that, in the case of Mexico, France had pursued a selfish policy. But how did they know whether France was not pursuing a selfish policy in this case also, and that the honorable member for Sheffield was only the tool of that policy? France might be intending to throw in that very case of Mexico into the settlement of American affairs; or else she might intend a *revendiquer*, the ancient colony of Louis XIV, namely, Louisiana, which had been ceded to Napoleon by Spain, under the treaty of San Ildefonso, and given by Napoleon, in 1808, to Monroe, because of the British cruisers. The proposal of the honorable and learned member, therefore, though bad enough before, is rendered doubly bad and dangerous by this proposed alliance to intervene. But even

if we did associate ourselves to intervene, where was the common basis of action? How could we define the boundaries of the South? Intervention, to be successful, must exhaust every point in dispute, and embrace every subject in controversy. Take, now, that one point of slavery; what should be said on that one point? Besides, we had to take into account that the North is now a great military power, while we had but few troops, widely scattered over Canada and an easy prey to an invader. The capture, by the North, of our scattered garrisons there would make us look rather small in the eyes of the world. Our commerce would also certainly have something to fear from the Alabamas and Floridas which the North could put upon the seas. He was not appealing to the fears of Englishmen, but was simply pointing out some of the consequences that would inevitably follow from our intervention in this contest. There was another point. We imported largely of grain, our two chief sources of supply being Poland and the northwest States of America. Was it likely that we should be able to get much from Poland under her present circumstances? No. Then we must rest mainly upon supplies from North America. But how would war affect that? Would not the distress in England be aggravated by a war with America? From the northern States of America we received 5,500,000 quarters of corn, whereas from the north of Europe we received only 2,000,000. The total imported into England in 1861 was 16,094,914 quarters, of which more than one-third came from the northwestern States, namely, Illinois, Michigan, Indiana, and Wisconsin—whose yearly available produce was not nearly exhausted by their exports. At least, this was the statement contained in the memorial of the Illinois commissioners. If those States could find a market for their corn in England, it would promote a good feeling between them and Canada; but if this country went to war with America, that good feeling would be prevented. In fact, a desire for alliance with us was already growing up in those States. By holding back from war those northwestern States will force a trade with us through Canada, and, perhaps, with that object, enter into close alliance with us, while the transit of the goods would be of material benefit to Canada, while, by running the risk of war, we should be injuring ourselves commercially in the greatest degree. It would be no less baneful to the Confederate States themselves. Every alliance to intervene had been ostensibly for the good of the suffering country; yet every such intervention had only served to increase their misery and distress. "Pacification" had always resulted in internecine struggle. "Well-being" had ever caused poverty and wretchedness. The South was now doing well. Why then interfere and spoil their chance? The honorable and learned gentleman had spoken of the recent invasion of the North, and said that Washington was now in danger and that the South had nearly achieved their object. Why, then, in the name of common sense, not leave them alone to achieve it themselves? To intervene now, when the South was described as all but successful, in order to receive a share of the glory of the conquest, would be both unfair and ungenerous. To proclaim an armistice would give a breathing time to the North; and when recruited she would recommence the struggle with redoubled fury, and carry it on with increased energy. The only chance of peace was when every one shuddered at the name of war. Above all things, he recommended the South to avoid being protocolled; diplomatic ability was the ruin of states. In conclusion, he trusted he had shown that it was not our duty to thrust ourselves into every struggle, but that we should observe the "golden rule" in politics as much as in private life. That, by such a fratricidal war, the effusion of blood would not be stopped but increased; that the hardships of Lancashire would not be lightened, but that the burdens of the people would be augmented and the sources of food for this country would be cut off. Nay, worse; these alliances to interfere in America would end in years of quarrels and bickerings in Europe, and would effectually ruin the South and deprive it of that stability and confidence which would result from achieving its own independence. Why, then, should we risk our good name and fame and endanger our very peace and quiet, where there is no rivalry of opposing churches nor ancient feuds of race to combat! Much more did he concur in the words spoken, on the 5th of February last, by the Earl of Derby, in the presence of the future King of England. That noble earl had then said:

"I confess I cannot bring myself to the conclusion that the time has arrived at which it is either wise, politic, or even legitimate, to recognize the South."

And with regard to recognition, while the struggle was still continuing, the noble earl had said:

"But in that case [when the war is not at an end] recognition is always followed by something further; for it means nothing unless the powers who join in it are ready to support by force of arms the claims of the state which they recognize."

The noble earl then came to this conclusion:

"I fear that the war must go on until both of the combatants see the necessity of coming to some settlement."—[3 Hansard, clxix, 24, 26.]

On these grounds he begged to move the amendment of which he had given notice—Amendment proposed,

"To leave out from the word 'That' to the end of the question, in order to add the words 'this House earnestly desires that an impartial neutrality should continue

to be maintained by her Majesty's government during the present unhappy contest in the States of North America"—(LORD ROBERT MONTAGU)—instead thereof.

Question proposed, "That the words proposed to be left out stand part of the question."

Mr. CLIFFORD said he should give his cordial support to the amendment, for he thought that if any precipitate act plunged this country into hostilities with the United States, a new feature of horror would be added to those now to be witnessed in America. But while he fully agreed in the conclusions to which the noble lord (Lord Robert Montagu) had come, he did not wish it to be supposed that he coincided with the sentiments by which those conclusions were prompted. He thought that honorable members should abstain from all violence of language, such as had been used by the honorable and learned member for Sheffield; and for himself, he should carefully abstain from applying strong language to either of the parties engaged in this miserable contest, for he believed it was a struggle in which both parties had acted from conscientious motives. It was only natural that those on the one side, who had been taught from their youth to consider America as a united nation, should be loth to see dismemberment, whilst he knew that the other side, who had been trained to believe in the sovereignty of their States against the northern federal principles, believed they were standing up for the defense of their hearths and homes, and gallantly did they maintain the principles they had been taught. There was nothing in this struggle which justified the comparison which the noble lord had made between the confederates and the Sepoys, and nothing which made it analogous to an insurrection in Ireland, a province of England, or a department of France. If they wished to trace the origin of the disastrous scenes now passing in America, they must go back to an early stage of history. The Southern States could not be said to be waging a war of rebellion, for the Constitution which bound the States together, distinctly acknowledged, that for all purposes, except for such matters as customs, Indian treaties, coinage, the post-office, and external relations, the States were separate sovereignties. So strong was the feeling against the federal system, that when Calhoun was on his death-bed, and his chaplain was praying for the welfare of the American nation, the dying statesman interrupted him to assert that there was no such thing in reality as an American nation. "We are not," he said, "a nation, but a confederation of States." The Northern States had no more right to interfere with the Southern States on the question of slavery than the Emperor of Russia would have a right to interfere between us and our West India colonies in a similar question before we granted negro emancipation. The slave trade was stopped; but as far as regarded the slaves on the lands in certain States, the other States were forbidden by the Constitution to interfere with them. He did not wish it to be supposed that he was at all in favor of the institution of slavery, for he thought it equally degrading to the master and the slave. But he did not believe that the majority of the southern masters were cruel masters. Cruelty on the part of masters was the exception, and not the rule; and when the exception occurred, the law forbade any inquiry to be made in respect to the relations existing between master and slave, if the master, in inflicting punishment, stopped short of the extreme punishment of death. The law could take no notice of stripes, mutilation, or torture, as long as life was spared. That was not a state of things which an Englishman could regard with anything like approbation. Hitherto, however, slavery had derived its chief support from the fact that when any question as to the slave trade arose with this country, the power of the whole federation was employed to uphold the institution. Some years ago he visited the prisons at Charleston, in company with an American friend, and found several black sailors there who were incarcerated for no other offense than being negroes, and who were liable to be sold as slaves to pay the expenses of their maintenance, if the captain of the ship to which they belonged did not pay the money for their keep. He asked his conductor whether, if these happened to be English subjects, we could apply for redress to the federal government. The reply was that we might make the application, but that the federal government had already decided that the case was one with which the authorities at Washington could not interfere, and that it was simply a State regulation. Upon that he (Mr. Clifford) suggested that England might take them at their word and declare war, not against the federation, but only against the State of South Carolina; but his friend replied that if we touched a single State we committed an act of hostility against the whole Union; so that in reality the whole power of the North was engaged to support the system. Even Mr. Lincoln's proclamation was admitted to be an illegal act, and to be justified only as a war measure. Looking at the question broadly, he would say that he was himself the friend of both North and South; but it would be idle to disguise the change of feeling that had occurred during the last two years. Into whatever society one went, high or low, one found that the general impression was that the South was making progress, and that its efforts would ultimately be crowned with success. That revulsion was attributable partly to the insolence of the northern press, and to the aggressive and insulting conduct of one of the federal commodores; but, also, in no inconsiderable degree, to the wanton barbarity with which the federal

government had allowed its officers to wage the war. They read, not of victories gained by the federals, but of the desolation which they spread over countries which were lately blooming with fertility, as though they sought to emulate the ravages of Attila or Genghis Khan. Who could read without horror, of lands as wide as the whole of Scotland being submerged beneath the flood of the Mississippi, and of the burning of Jacksonville, and of the destruction of churches, houses, and private property of all kinds! And these things were done, not for military objects, which would afford some excuse for them, but out of such sheer, wanton malice that even the negroes looked on disgusted and aghast. Again, had the condition of the negroes been at all improved by the war? Why, they had been shot down by federal soldiers, under the eyes of their officers, who never interfered. In Illinois the whites, jealous that the negroes should dare to compete with them in honest labor, had burnt their houses over their heads; in fact, the black man was as unhappy as the flying-fish, which had its enemies both in sea and air, and could find refuge on neither side. General McNeil had shot six innocent men in cold blood, but the government had not ventured to punish him or any of the other malefactors who had committed similar atrocities. Nor had they tried to arrest the devastations of Blenker. That the end of all this must inevitably be the separation of the two groups of States was the conviction of almost every thinking man in Europe, and even in America. Already there were signs that the struggle was drawing to a close. A considerable peace party was growing up in the North, and these, added to the people of the South, gave a majority against the continuance of the war. He was sorry for the disappointment of those who, with the honorable member for Birmingham, (Mr. Bright,) contemplated the establishment of a vast empire stretching from the pole to the tropics; but he could not resist the belief that if peace were not soon concluded the North would be apt to fall under a sheer military despotism. Even at the present an approach to that result had been made, as was shown in the arrest of Mr. Vallandigham for having spoken in favor of peace. The President's argument, that the man who dissuaded a recruit from joining the army did as much harm as he who killed a soldier, was very remarkable, and implied that peace ought never to be advocated, or war terminated. In conclusion, he would remind the House of the emphatic warning that Mr. Everett, a good and able man, uttered ten years ago against the spirit of military aggrandizement, which, as he showed, had been the ruin of Greece and Rome, and might also be fatal to America if, instead of trusting to natural and peaceful progress, she resorted to conquest.

The CHANCELLOR OF THE EXCHEQUER. Sir, I am desirous at the commencement of such remarks as I have to offer to the House to take a lesson from the honorable and learned member for Sheffield, (Mr. Roebuck,) who told us he had learnt to bear with the opinions of others when they differed from his own. I wish to record my adhesion to that sentiment; I may go, indeed, a step further, and say that I think it is the duty of every member of this House, and most of all every adviser of the Crown, in approaching this question to use his best endeavors to suppress within his breast everything like passion—I would almost say to lay aside every vestige of feeling even in regard to it. Our duty is to treat this matter as one of dry fact, and, however passion and feeling may tend to intrude themselves into the arena of reason, to strive to hold the balance even and to deliver our judgment with as much impartiality, as much abnegation of all selfish prejudices, and of all angry emotion, as if we were sitting on the bench of justice, or in the box of jurymen. It is impossible, if we look at the matter as one of feeling, not to see that the feelings with which we must regard it are mixed. If we take the case of the Southern States, there can only be a few who do not sympathize with a resistance as heroic as ever has been offered in the history of the world on the part of a weaker body against the overpowering and vastly superior forces of a stronger. But, on the other hand, if we look at the cause of the South from that point of view in which it stands so intimately connected with at least professions of strict adherence to slavery, a strong counter-current of feeling must arise in the mind. I mention these circumstances because I think that upon the whole we are without excuse, if, in a case where different considerations tend so powerfully in opposite directions, we suffer our judgments to be bewildered by strong sentiments of partisanship either on one side or on the other. So, likewise, with respect to the North. I agree with the last speaker in thinking it impossible for any Englishman, whatever may have been his prejudices against American institutions, not to have a very strong feeling of sympathy with those who had formed in their own minds exalted visions of the great future of their country, stretching from one end of a great continent to the other, and who see those visions now threatened with destruction. There is no stronger or more legitimate instinct than that instinct of nature which revolts against disruption, and it is easy to understand the feelings which have governed the people of the North, not only in entering into this war, but even in pushing it on after it seems to us to have passed all bounds of reason and of hope, however much there may be in their measures and language which appears difficult to reconcile with the high intelligence that usually characterizes them. I may venture also to say for my own guidance, because here I differ from the honorable and learned member for Sheffield,

that I think we ought to be cautious as to giving what are termed British interests a prominent place in our arguments on this question. I never have agreed with those who thought it was a matter of high British interest that the old American Union should be torn in pieces. Nor do I agree with the honorable and learned member for Sheffield when he says that the American Union had become so vast and so menacing to the world, that we were in danger of dwindling beside it, or of experiencing a defect of power to maintain our rights. I do not think that territorial extension necessarily adds to the vigor of a State. I do not admit that either England or France, or any other country of Europe, had lost, or was relatively losing, strength in comparison with the United States of America, or was less able than before to assert every just claim and every legitimate interest in the face of the great republic. I have always been of opinion that, involved as England is, not so much as a matter of mere interest, but on considerations of duty and honor, with respect to the British North American colonies, the balanced state of the old American Union, which caused the whole of American politics to turn upon the relative strength of the slavery and northern interests, was more favorable to us, more likely to insure the continuance of peaceful relations in America, as well as the avoidance of all political complications arising from the connection between this country and its colonies, than the state of things which would exist if the old American Union were to be divided into a cluster of Northern and a cluster of Southern States. The cluster of Northern States having lost all connection with the slavery interests that were formerly adverse to extension northwards, would have, of course, every motive—I do not say by violent or illegitimate measures—to endeavor to re-establish their territorial grandeur by uniting themselves with the British colonies of North America. But, whether that be a sound opinion or not, I cannot help stating with some confidence that if we strongly put forward the consideration of British interests in that matter—if we found an argument for recognition of the South on the plea that British interests require the separation, and that British greatness was threatened by the former condition of the American Union—by that very fact you stamp upon your argument for recognition, upon every expression even of a wish for peace, a certain character of hostility to our brethren in the Northern States. I am sure the honorable and learned member from Sheffield will feel I am warranted in alluding to the subject in a pointed manner after he has declared in emphatic terms, in connection with his motion for recognition, that he is determined to do all he can on the ground of British interests to prevent the reconstruction of the American Union. With respect to the motion of the honorable and learned member, the first objection which I shall feel it my duty to take to it I must take also to the amendment moved by the noble lord, for either the motion or the amendment would involve the assumption by the House of Commons of that which it is perfectly entitled to assume, if it thinks fit in point of right, but which it has not yet thought it expedient to assume, and which I do not think it should assume—namely, the function of determining by a positive declaration the course which should be pursued by the executive government, when it is the executive government alone, and not the House of Commons, that can have close and minute cognizance of every circumstance from day to day bearing upon the progress of the American contest and the position of England in regard to it, and when, therefore, prudence dictates that the House should continue to leave in the hands of the executive government that discretion which it has heretofore exercised to the satisfaction of the country. There is no merit to be claimed by the executive government for that which it has done or omitted to do; but this I may say, that, setting apart all reference to this or that question of international or maritime law which may have arisen in the course of the last two years, and looking to the general policy which has been pursued—a policy not of indifference, not of unobservance, not of blindness, but of faithful and strict neutrality up to the present moment—there can be no doubt it has been the only policy which would have answered to the convictions and desires of the country. I, therefore, hope the House will not be disposed to entertain either a motion or an amendment which would have the effect of determining beforehand, by rules laid down in set phrases, from which there would be no power to depart, either one way or another, whatever the variations of circumstances, the course of which the government is to be bound to pursue; but will rather leave the government to act in the spirit in which it has hitherto acted, and with that regard which it has hitherto endeavored to show to the claims both of justice and of policy. But if there be one moment more inconvenient than another for the motion of the honorable and learned member for Sheffield, I think the honorable and learned gentleman will himself confess this is that moment. The motion of the honorable and learned member for Sheffield is peculiarly inconvenient at the present moment. I do not say that the main result of this contest is, humanely speaking, in any degree doubtful; but certainly there has not been a single epoch during the whole period of the war, which has now been raging for more than two years, at which there were pending military issues of such vast moment, both in the east and west—issues so important with reference to the future position and interests of either or both belligerents. But if the motion is exceptionable upon principle, and if the particular moment at which it is

made is in some respects unfortunate—and I admit that in regard to time the fault is not entirely his because he is placed between the necessities of the ballot-glass which lies upon our table and the arrival from day to day of the packets from America—yet there is another matter upon which he must be held responsible, and that is for the speech with which his motion was accompanied. My honorable and learned friend began with pathetic complaints of the obloquy to which he knew he was about to expose himself. He came in almost a lamb-like spirit to offer himself as the willing recipient of all the violent vituperation which he saw he was about to bring upon his head. At the same time I own I rather pity those who undertake, in a contest of that nature, to compete with my honorable and learned friend. But, sir, these are small matters. In this land of free speech, and on this floor of free discussion, we perfectly understand each other in regard to the occasional interchange of mere hard words. But the speech of my honorable and learned friend had an importance far beyond the epithets which he may have launched against this or that man, or which may be launched against him in return. He cannot disguise—he will not disguise—he is much too candid, sincere, upright, and manly to disguise—that the whole of that speech from beginning to end was couched in the spirit of the strongest partisanship for the South—in a spirit, I may almost say, of passionate partisanship for the South. Nay, more, in the first place a speech made for recognition in the spirit of determined partisanship, at once bears upon the character of the very measure which it recommends. It is not a very easy matter to separate between recognition and intervention; but if it were an easy matter to separate between them, then if at the very fountain head from which the proposal proceeds the proposal itself is associated throughout his whole argument with undisguised hostility to one of the parties, what chance or hope is there for recommending that recognition should take place, and at the same time that the appearance, much less the reality, of true neutrality should be maintained? But it was not even to this that my honorable and learned friend limited himself. He went a step further. He argued upon our duty to the men of Lancashire. What was the meaning of that portion of his speech? Recognition does not relieve the men of Lancashire. Recognition does not bring one single bale of cotton to Lancashire. “But,” said my honorable and learned friend, “we have heretofore been in the condition in which the workmen have been patient, because they have known that the government were not to blame; but we have now reached the point at which they will know that it is the government, and the government alone which prevents the restoration of the raw material on which their industry depends.” Now I am the last person who would accuse my honorable and learned friend, of all the men in this House, of using words without meaning. That is a charge which I must say can never fairly be brought against him. Moreover, he deserves this praise, that his meaning for the most part is unusually clear. Well, these words are as clear as any words which ever fell from him; and their meaning is that we are not to stop at recognition, but are to follow it up with those other measures which alone will satisfy that which he thinks is the necessity of the case and what is the clear necessity of his argument—namely, that upon the adoption of his motion was to follow the restoration of an abundant supply of the raw material of our cotton manufacture for the industry of Lancashire. Such being the speech of my honorable and learned friend, and such being his motion, I confess that I should find in either the one or the other ample reason for objecting to its adoption by the House. But her Majesty’s government I do not think have ever professed to feel indifferent on this question. It is impossible for any one with the feelings of a man within him to be indifferent upon it. Moreover, I believe that a very general union of sentiment and opinion exists in this country, not upon every matter relating to the present war, but upon this great question—whether we wish that this war should continue or should cease. My belief is that at least nineteen out of every twenty men in this House, perhaps I might say ninety-nine out of every hundred—I do not know, indeed, that there is a single exception—earnestly and fervently desire that it should terminate. Why, Sir, was there ever a war of a more destructive and deplorable—I will venture to add of a more hopeless character? Measure it by the enormous absorption of human life, which counts not by thousands, nor by tens of thousands, but by hundreds of thousands. Was there ever a more deplorable absorption of human treasure, which has brought debts upon countries which heretofore were happily in practice free from them such as not only threaten to depress permanently, or for a long course of years, the condition of the population, but even perhaps to involve the greatest political difficulties throughout the whole of what was once the flourishing and happy American Union? Well, if these are common to both parties, is it possible that we as Englishmen should regard otherwise than with deep pain the special consequences entailed by this war upon each party severally? Look at the embittering and exasperations of the relations between the black man and the white man in the South. Look again at the suspension of constitutional liberty in the North, the utter confusion of all the landmarks that separate between right and power—the danger into which the very principle of freedom has been brought in that which used to boast itself the freest, and which we, perhaps most of us, admit to have been at any rate

one of the freest nations of the earth. Look at the discredit to liberty abroad—the discredit, not only to democratic, not only to popular, but I venture to say to all liberal and constitutional principles—which has been caused in the eyes of the rest of the world by the contemplation of the transactions of the last two or three years, and especially of the last twelve months, in North America, I trust there are few of us here who have ever suffered narrow unworthy jealousies of the American Union to possess our minds. But I believe if there be such a man, if there be those who have taken illiberal or extreme views of what was defective in the American character, or in American institutions, who closed their eyes against all that was great and good and full of promise to mankind in that country, surely all alike must now feel sentiments of compassion and concern absorbing every other sentiment. And the regret and sorrow which we feel at the calamities brought to our own doors by this miserable contest are almost swallowed up when we consider the fearful price—more fearful, I believe, than in the history of the world was ever paid, I do not mean in money, by a nation in a state of civil war—a price not alone in the loss of life, not alone in the loss of treasure, but in the desperate political extremities to which the free popular institutions of North America have been reduced. Why, sir, we must desire the cessation of this war. No man is justified in wishing for the continuance of a war unless that war has a just, an adequate, and an attainable object, for no object is adequate, no object is just, unless it also be attainable. We do not believe that the restoration of the American Union by force is attainable. I believe that the public opinion of this country is unanimous upon that subject. (No!) Well, almost unanimous. I may be right or I may be wrong—I do not pretend to interpret exactly the public opinion of the country. I express in regard to it only my private sentiments. But I will go one step further and I say I believe the public opinion of this country bears very strongly on another matter upon which we have heard much—namely, whether the emancipation of the negro race is an object that can be legitimately pursued by means of coercion and bloodshed. I do not believe that a more fatal error was ever committed than when men—of high intelligence I grant, and of the sincerity of whose philanthropy I for one shall not venture to whisper the smallest doubt—came to the conclusion that the emancipation of the negro race was to be sought, although they could only travel to it by a sea of blood. I do not think there is any real or serious ground for doubt as to the issue of this contest. I admit that we ought to desire—I believe that the bulk of Englishmen do desire—that it should come to a close. But does the honorable and learned gentlemen think it therefore follows that we ought to adopt his motion? Or does he think that recognition which he proposes would bring the contest nearer to a close? [Mr. Roebuck. "Hear, hear."] No doubt my honorable and learned friend thinks it would terminate it, or he would not have made this motion; but I must venture to join issue with him on that point. What is that recognition to be? Is it to be a recognition with intervention or without intervention? Now it is quite true that in argument recognition and intervention are perfectly separate. I cannot agree with the noble lord, (Lord Robert Montagu,) who said that the war between France and England which broke out in 1778 was due to the recognition of the American colonies by France. I think I know the source from which the noble lord has quoted that statement, but if he will go back to the original documents he will find that it is not accurate. [Lord Robert Montague. "The *Annual Register*."] Then that *Annual Register* contains the documents themselves, and if the noble lord has gone back to that I confess I am still more surprised at his statement. This is a point of much importance, because it is a statement which one sees constantly made that France recognized the United States, and that upon the fact of that recognition England went to war with her. That is totally incorrect. The message from the King to Parliament was delivered on the 17th of March, 1778, in these terms:

"His Majesty having been informed, by order of the French king, that a treaty of amity and commerce has been signed between the court of France and certain persons employed by his Majesty's revolted subjects in America, has judged it necessary to direct that a copy of the declaration delivered by the French ambassador to Lord Viscount Weymouth be laid before the House of Commons; and at the same time to acquaint them that his Majesty has thought proper, in consequence of this offensive communication on the part of the court of France, to send orders to his ambassador to withdraw from that court."

Therefore the message of the Crown immediately points to the declaration delivered by the French ambassador to the Secretary of State. What were the contents of that declaration? The first paragraph recites that the "independence" of the colonies had been virtually established, and announces the treaty of commerce. The second points out "the good understanding" between France and great Britain, and states that there is no exclusive privilege. The third confides that his Britannic Majesty will particularly take effectual measures to prevent the commerce between his Majesty's (i.e., France's) subjects and the United States from being interrupted. In the fourth paragraph it declares that very treaty which the noble lord states had been kept secret for a long time. It thinks it superfluous to state that the King of France, to protect effectually

the lawful commerce of his subjects, and to maintain the dignity of his flag, has taken effectual measures in concert with the United States of North America. Not only so, but of all the documents of the period, so far as I have been able to examine them, there is not one which refers to the simple act of recognition as the cause of war. The very answer to the message, the address presented by the House of Lords in answer to the message, fixes the construction in the strictest manner to that which I have stated. We always find the complaint against France was not her acknowledgment of independence, but the avowed support she had given and the formal engagements, offensive and defensive, into which she had entered. It is much better that we should have the exact truth before us on this subject; but then I must say it is very difficult, as far as I know, to find cases where there has been recognition pending the contest, and where that recognition has not been followed by war. In the case of the Spanish colonies, we can hardly say, consistently with truth, that the recognition took place pending the contest. The contest, I think, must be allowed to have been virtually at an end. In the case of America, however, as the recognition was made pending the contest, it was followed by war. In the case of Greece there was recognition pending the contest, and there was war when the battle of Navarino took place. In the case of Belgium, likewise, it was not found practicable to separate mere recognition from the use of force. I admit to the honorable and learned gentleman that there is no reason in the world why, in abstract argument, we should not separate between recognition and intervention—I do not say they are inseparably united—but this I do say, that when we find in each particular case of recognition pending a contest that has heretofore taken place, the use of force has commonly accompanied recognition, a just suspicion arises in the mind that whether it be intended, or not intended, some relation of cause and effect substantially obtains between the two things, and that, consequently, the greatest caution and circumspection must be used in order to secure that while you mean the one you do not find yourself plunged into the other. I must confess there are the strongest reasons why England, at any rate, should in this matter abstain from taking the prominent part recommended by the honorable and learned member. The very fact of our enormous interests in the American continent make us, as it were, a party in the struggle, and that very circumstance would deprive us of that character of impartiality by which alone intervention could be rendered useful. The honorable and learned gentleman, indeed, recommended concert on our part with the other nations of Europe, but in his speech that was reduced to the case of France. But what is the position of France on the American continent? I grant the position of France for a long period in regard to the United States was an admirable one for delivering a judgment and administering a lesson, for so it must be, of moral weight in the general interest of humanity, because France had taken a practical share in the original establishment of American independence, and never at any period was seriously implicated in controversy with the United States. But how does she stand now? France, by her expedition to Mexico and the greatness of her military engagements there, is even more decidedly and distinctly a party on the American continent than is England. I may be too sanguine—I do not speak with authority—but though America is from tradition, usage, and, perhaps, from national character, accustomed to assert her independence of Europe, both as to material, force, and opinion, I do believe that the impartial and well ascertained spirit of Europe would have the greatest weight in America; but I must say this, I feel that England and France, circumstanced as they are, even if united in the act of recognition, would not be able to stand up in the face of the world and say, we claim to represent the impartial opinion of the world. I know of no benefit, or advantage that would attach to any intervention, arbitration, recognition, or interference of any sort, unless it was entirely free from all suspicion of partial or separate interest, or peculiar views. If you had such a declaration of opinion, that matured form of opinion in the States of Europe generally, representing the civilized world in a matter of this kind, I believe it would weigh very greatly with the minds of the citizens of America. But an act of recognition proceeding from England, an act of recognition proceeding from any State which, either from tradition or other circumstances of that kind, is placed in critical relations with America in matters pertaining to its own interests, not only might have, but probably would have, a result precisely opposite that anticipated by the honorable and learned gentleman. It would assume the character of an interference in the, so to speak, private, at any rate particular affairs of the American nation. It would go far to create a strong patriotic reaction among the citizens of the North, it might go far to give to the cause of the North that defensive energy which hitherto has been the great secret of the strength of the South, and the want of which has been the great cause of the northern inferiority; because I think we must all feel that the descendants of Englishmen in America, whatever errors they may or may not have committed in the course of this unhappy war, have amply proved their possession of signal and splendid courage. There is no reason why either party should be ashamed on that score, and I think that the honorable and learned gentleman would do well to consider how far intervention or recognition, more or less looking in that direction, might stop that growth of opinion, which

I, with him, should regard as sound and healthy, which is opposed to the continuance of this war, and which has of late, for the first time, taken a definite form in assemblages of great masses of people. The responsibility of proceeding to such an act as that would be a very heavy responsibility. We must look on with some sense of the immense difficulty attending any steps in a matter of this kind, and we most feel—at least I am sure the great mass of this House must feel—that as long as doubt exists that doubt ought out to be ruled on the side of safety. We feel, I think, with the honorable and learned gentleman that it is time this war should end. But I confess I have more faith in the gentle action of that public opinion as it grows and is gradually matured in Europe, than I have in diplomatic acts which may tend to assume an appearance of undue interference in American affairs, and especially those diplomatic acts which come from quarters which may justly be suspected of interested motives. It is not, therefore, from indifference—it is not from any belief that this war is waged for any adequate or worthy object on the part of the North—that I would venture to deprecate in the strongest terms the adoption of the motion of the honorable gentleman. If ever there was an occasion there is an occasion now in North America when the warmest patriots of this country may step forward and say—

"Sat funera fusi
Vidimus, ingentes ac desolavimus agros."

But do not let us run the risk of making worse that which is already sufficiently horrible, and adding to the deadly feud which now exists other feuds and other quarrels which will carry still wider desolation over the face of the earth.

Mr. W. E. FORSTER said he should support the amendment of the noble lord, (Lord R. Montagu,) not for the purpose of fettering the government, but rather of supporting them in that policy of neutrality they had hitherto pursued, and because the motion of the honorable learned member for Sheffield involved so great a departure from that policy as to require some distinct protest against it. He was glad that the question was at last before the House, and that the time had come for speaking their minds upon it. It was pretty clear that recognition of a seceding State, while the question whether the secession would be successful or not was unsettled, was premature, and being premature it was a breach of neutrality, because it anticipated the defeat of one side, and gave the prize of admission to the community of nations to the other. While that was the principle of international law, the custom had been not to resort to intervention or recognition, unless the recognizing power was prepared to enforce its views by arms. The recognition of the South would be a *casus belli* if the North chose to make use of it, and it was mere idle talk and empty boasting if we were not prepared to enforce it. The motion of the honorable and learned gentleman meant war, or it meant nothing. He believed, from the language which he had held, that the honorable and learned gentleman was utterly reckless whether it would have that effect or not. But, whether he meant war or not, did the country mean war? No doubt there was some sympathy felt for the South in various quarters, and he would allow the Southerner had shown a courage which deserved sympathy; but he did not believe that the sympathies of any class of the people in this country went so far as to submit to an additional income tax for the purpose of defending Canada. The constituents of the honorable member for Liverpool, (Mr. Horsfall,) who seemed to have some sympathy with the South, would hardly like to see the seas covered with Northern Alabamas preying on their commerce, notwithstanding the boast of the honorable and learned member for Sheffield, that one warrior would sweep them all away. He was quite sure that the honorable member for Dungarvan, (Mr. Maguire,) did not mean war. He believed his amendment was proposed with a motive and view to peace; and, in truth, unless the harvest was better than it promised, the sufferings of the countrymen of the honorable member would be great indeed if they were deprived of the American corn crop of this year. He would never allow commercial considerations to prevent him engaging in a just war, but when they were asked by the honorable and learned member for Sheffield to go to war for merely selfish purposes—to procure cotton—it was allowable to ask "What would be the cost of that war in corn?" There were gentlemen, however, who believed that if we interfered, though we might go to the verge of war, we should not really have war, and their grounds for believing this was European concert, and the influence of the American peace party. European concert, in fact, meant the concert of France. The honorable and learned gentleman, and the honorable member for Sunderland in the joint capacity of patriots and courtiers, told them that they had seen "the great French ruler," and that he had charged him with a message with which her Majesty's government were entirely unacquainted. The under secretary for foreign affairs said he knew nothing about it, and he understood that in another place Lord Russell had stated to-night that the French ambassador had thought it necessary to call upon him to say that the honorable and learned gentleman opposite was quite mistaken, and that there was no foundation for the rumor. [Mr. LAYARD. "It was this very afternoon."] It might be said, of course, that "the great French ruler" had changed his mind—he would leave the two honorable gentle-

men, the French ambassador, and "the great French ruler," to settle that matter among themselves—or it might be that he deemed it advisable to have two ambassadors in this country—Baron Gros, to communicate with the government, and the honorable and learned member for Sheffield, to communicate with the House of Commons. It might be possible that he had requested the honorable and learned gentleman to sound the British House of Commons, and to find out whether they would follow his lead in this matter. For his part he had had enough of following that lead. Alliance with France for the purposes of intervention was apt to lead to war. That was our experience in the Crimean and the Chinese wars. We were heartily glad to get out of the Mexican intervention, and there were few who did not look with some feeling of suspicion on the joint action with France in the matter of Poland. If we wished to "drift into war," by all means let the honorable and learned gentleman be allowed to put the good English ship under a foreign pilot. To come next to the American peace party. The Chancellor of the Exchequer told the House that any attempt at intervention might weaken the American peace party. That undoubtedly was the case, and it might easily be shown that every symptom of a readiness to intervene had weakened whatever there was of a peace party in the North. Lord Lyons, in a dispatch of November 17, gave a very curious account of an interview he had had with the leaders of the American peace party on the question of intervention, and from his account it appeared that the thing they dreaded most was foreign intervention, the very idea of which was enough to destroy their hopes; and, indeed, the publication by the Foreign Office of this dispatch, showing that the peace democrats were in communication with Lord Lyons, had been to turn the tide against them at a critical moment, and to decide the Connecticut election in favor of the war party. No doubt it was mainly on the strength of that dispatch that the British government declined to take part in the offer of mediation, which was afterwards undertaken by France alone. The French government conveyed their offer in a most delicate manner, but it produced such a reaction in America that the government were able to pass their conscription bill, which even the war party had not expected, and the failure of which might have brought the war to a close for want of men. That bill was just now coming into operation, and it might depend not a little on the course taken by the House of Commons on this motion whether President Lincoln would have power to enforce it against the wishes of many in the North. It might seem strange that the American people should pay so much attention to what was said at a distance; but had there not been periods in our history when this country was divided into two great parties, and when it would have given infinite strength to one party to be able to show that their adversaries were receiving assistance from abroad? If they carried out this resolution it must be by force, and as a compulsory resolution he was sure the House was not prepared to carry it out. It might be said that the people of the Northern States would not go to war with us for adopting the course which the honorable and learned member for Sheffield proposed; but, though they had been called an upstart and insolent race, they were our own children. They were descended from a race that had never allowed themselves to be borne down. Therefore, dangerous as it might be, suicidal as it might be, for them, we could not say that they would not go to war with us if we carried out this resolution, which, according to the principles of international law, would be a sufficient justification for their adopting that course. ["No, no."] A war with the United States would be dangerous to us on several grounds. It would be dangerous to our commerce, and it would be dangerous to Canada; but it ought to be unpopular on far higher grounds, because it would be a war against our own kinsmen, for slavery. He felt strongly in reference to slavery, for he was one that had been brought up in that "hypocritical cant" of a hatred to slavery from his childhood. The honorable and learned member for Sheffield said, that the hostilities between the Northern States of America and the Southern had been caused by a question of tariff; but that was an allegation which had been got up solely for consumption in this country, and it ought to have been consumed long ago. In the first place, there had never been a protective measure brought into either House of Congress without the assistance of the Southern members; and, in the second place, there was no State so completely a protection State as Louisiana, the backbone of the southern confederation. How was the line drawn between the two sets of States? Exactly by slavery. The Southern States were secession States exactly in proportion as they were slave States. If the struggle were one between a free tariff, and a protection tariff, where would the line be drawn? Were not the Northwestern States just as much injured by a protection policy as the Southern? And yet no part of the Union was more determined to fight for the Union. He was not one of those who justified the northerners in their action about slavery; but they found that when the people of the Northern States were called upon to choose between love of country and love of slavery they gave up the latter. They had a patriotic feeling about their own Union, and they were becoming every day more alive to the fact that they could not uphold that Union and preserve slavery. For that reason—he did not say from an anti-slavery feeling, though a great number of the people of the North entertained such a feeling—they were giving up slavery. The right honorable gentleman the Chancellor of the Ex-

chequer stated on another occasion that he thought the best way to destroy slavery in the Southern States was to give the people of those States power; but in its impression of the 28th of May the Richmond Examiner, one of the leading organs of the South, stated that, instead of "Liberty, Equality, and Fraternity," the confederates were for "Slavery, Subordination, and Government," and that there was "a slave race born to serve, and a master race born to govern—such are the principles we have received from ancient history." It was trifling with English feeling to say that men who had gone to war with such an object as was avowed in the Richmond Examiner would not do their best to carry that object out. The government of this country were now called on to do something which, if it meant anything, meant intervention. ["No," "Hear."] He felt great anxiety for the success of the siege of Vicksburg, for he believed two things depended on it—peace and freedom. He could not help thinking that if Vicksburg were taken, and the other side of the Mississippi cut off from the slave territory, we should see an end of the war. He thought the men of the North would then feel that they had gained their great object—namely, the prevention of the formation of a powerful slavery confederation. He thought it by no means improbable that if Vicksburg were taken, the northerners would say, "We have prevented you from carrying out by yourselves that extension of slavery which you could not carry out through the Union, and now we shall leave you to yourselves to settle this slavery question as you can." Was this country prepared to enter upon intervention, which from its nature must be serious, in order to prevent the northerners being able to take this ground, and in order to secure this end—slavery on the other side of the Mississippi, and therefore its indefinite extension? With the knowledge that interference of any kind must imbitter the conflict now raging, would this country intervene and extend the circle of the horrors of war—it might be at the risk of involving ourselves in its miseries? Those who thought with him had often been taunted with their dread of war. Those who taunted them taunted them truly. He did fear such a war as this would prove. Not because of the sufferings it would entail upon England, though he believed these were underrated. He had such confidence in the endurance, energy, and patriotism of his fellow-countrymen—using the word in its old Roman and Greek sense—that having once gone to war they would fight for their country independent of the question of right—that he had little fear of their constancy in any struggle. But what would England gain by such a war? The great Anglo-Saxon race would be torn, not merely by a double but triple civil war, and every despot, civil and religious, throughout the world would rejoice to see them destroying each other. Were there any "degenerate Englishmen" who could look with joy on such a prospect? He would be a bold man who ventured to prophesy how the present struggle would terminate; it was not a war, but a tremendous social revolution; but we could pray that out of the war might come a purification from the evils of slavery, without which there could be no peace. They could, however, perceive the alternatives which presented themselves if this country interfered. Either the Union would be torn into many conflicting elements, doomed by the hand of their enemies to centuries of anarchy and intestine conflict, or the effect might be to unite the North once more by the strong common bond of hatred against this country. The South meanwhile might come out a triumphant slave confederacy—"our natural allies," as the noble lord opposite (Lord Robert Cecil) called them. They might be the natural allies of the noble lord and of the order to which he belonged. But they never could be the natural allies of Englishmen, for all our instructive traditions of freedom were opposed to such alliance. He prayed that England might be saved from such an unjust, barbarous, and unchristian war, waged, as it would be, against the spirit of civilization and against every principle of religion and morality. The Ruler who guided the destinies of the world took care that crimes committed by nations, however powerful, should not go unpunished; and England could not expect to escape punishment if she entered upon so unprovoked, so selfish, and so unjust a conflict.

LORD ROBERT CECIL said he did not often agree with the honorable member for Birmingham, (Mr. Bright,) but for once he enjoyed that privilege, in the phrase in which he had described the honorable member who had just sat down as a fanatic about slavery. He was a fanatic in the true sense of the word—such a fanatic that for the sake of the object toward which his fanaticism was directed he consented to sacrifice the very means of attaining that object. He (Lord R. Cecil) had never been able to understand the true reasoning or conduct of the anti-slavery party in this country. All Englishmen agreed that slavery was a dreadful thing, and that few human desires should be entertained more earnestly than the desire for its extinction; but the anti-slavery party in their eagerness for that result seemed to have forgotten all the teachings of history. The honorable member who had just sat down did not profess to hope for the termination of slavery through the complete conquest of the South by the North; but the honorable member for Birmingham, who sat behind him, no doubt looked for its extermination in that manner. But what did the idea involve? One anti-slavery agitator, representing the feelings of his class, declared that he looked with confidence to the driving of three hundred thousand slave-owners, with their wives and families, either into exile or to death, as a step toward the abolition of slavery. Of course,

slavery might be abolished by that means; but he ventured to say, in the words of the aspiration with which the honorable member for Bradford concluded his speech, that a crime so hideous must call down on the nation which perpetrated it a punishment more severe than had fallen on any nation since the world began. He would ask the honorable member to look to history to see how slavery had been exterminated in past times; for it was not a new evil; almost every people occupying a new soil had that blot upon their institutions. In almost every case it had been gradually rooted out; from every civilized nation, except the States of America, it had disappeared, but never in consequence of the pressure of armed force. It was eradicated in every instance by the influence of public opinion, and that was the only way in which it would be eradicated from the Southern States. How can they hope to bring the influence of opinion to bear on the Southern States if they made them permanently the enemies of this country? The policy the honorable member advocated of making England the partisan of the North, enlisting its aid to reduce the white man to slavery in order that the negro might be benefited, would cause slavery to remain to the end of time a point of honor with the South. The influence of England for the gradual abolition of that institution would be entirely frustrated. In fact, there could be no more suicidal policy for the real friends of the slave than to write it down in the history of the South that the greatest miseries which their fathers underwent were inflicted upon them by the North with the assistance of England in the endeavor to eradicate slave institutions. The southerners would look upon it as binding on them never to relinquish the principles for which their fathers had fought. He entirely repelled the insinuation that it was as slaveholders that the people of the Southern States were the natural allies of England. They were, however, the natural allies of this country as great producers of the articles we needed and great consumers of the articles we supplied. The North, on the other hand, kept an opposition shop in the same departments of trade as ourselves. But he wished now to say a word as to the speech of the Chancellor of the Exchequer, which was remarkable because it was the first definite declaration of policy which the government had made on the subject, and because it did not come from their distinguished chief. But what were the reasons given by the right honorable gentleman why the government should not assent to the recognition of the South? He never heard a speech which so remarkably supported all the positions it was intended to attack. The right honorable gentleman conceded everything—that slavery was not to be suppressed by the continuance of the war; that the hope of conquering the South was absolutely vain and futile, and therefore practically that this war on the part of the North was a gigantic crime. The right honorable gentleman conceded even this, that in theory recognition in no way involved anything like intervention, thereby admitting that if we recognized the South, the North would have no just cause of war with us on that account. But what were the right honorable gentleman's arguments for not assenting to the motion? First and foremost that he objected to the speech of his honorable and learned friend, (Mr. Roebuck.) The honorable and learned member for Sheffield proposed that a negotiation should be entered into in order to promote the recognition of the South; and the minister of the Crown, when declaring that he would not advise his sovereign to pursue that policy, said his reason was that there were marks of hostility to a particular party in the speech of the honorable and learned gentleman. Was it ever before laid down that the advice which a minister was to give to his sovereign at a critical moment, and with respect to a course which might decide the destiny of nations for generations to come, was to depend upon this, whether an honorable gentleman, however distinguished, betrayed partiality to one side or the other? He could hardly believe the right honorable gentleman was in earnest. But what was the next argument? It was that France and England did not stand in an impartial position for giving advice, because they possessed territory on the North American continent. But how far was that argument to go? Would the right honorable gentleman say that no mediation or recognition was to take place because the State that wished to mediate between other States happened to possess territory upon the same continent? He (Lord Robert Cecil) did not imagine that our possession of Canada influenced our judgment one way or the other. It could make no difference to us in regard to our American possessions, whether or not the two contending parties should continue an internecine war. But then the right honorable gentleman insisted that although recognition did not in theory involve intervention, yet intervention had almost always historically followed from it, and would follow from it in this instance. But was that the fact? Did we not recognize the South American republics at a time when the troops of Spain were still—[LORD R. MONTAGU. "No, no."] His noble friend behind him, by anticipation, denied the statement he was about to make, which was this, that at the time we recognized the South American republics, the troops of Spain had not yet left their territories. If his noble friend would consult his dates, he would find that the important fortress of San Juan d'Ulloa was held by Spanish troops till the 17th of November, 1825. Our recognition of Mexico took place in January of that year. But the case was still stronger with respect to the proceedings of the Americans themselves. They

recognized these republics before England had done so. They recognized Colombia in the course of 1822, though Porto Cabello was not evacuated by the Spanish troops till the 8th of November, 1823; and they recognized Mexico in 1823, although San Juan d'Ulloa was not evacuated until 1825. Therefore, upon their own grounds it was perfectly legitimate, without intervention and without war, to recognize a State which was practically independent, although some of the enemy's troops might still be found on her soil. But that recognition did not pass without remonstrance. That remonstrance came from the Spanish minister, it read like a remonstrance from Mr. Seward at the present time, and was so curious that he should like to read it to the House. The Spanish ambassador wrote as follows:

"In the National Intelligencer of this day I have seen the message of the President, in which he proposes the recognition by the United States of the insurgent governments of Spanish America. How great my surprise was may easily be judged by any one acquainted with the conduct of Spain toward this republic, and who knows the immense sacrifices she has made to preserve her friendship. In fact, who could think that, in return for as great proof of friendship as one nation can give to another, the executive would propose that the insurrection of the ultramarine possessions of Spain should be countenanced? And, moreover, will not his astonishment be augmented to see that this power is desirous to give the destructive example of sanctioning the rebellion of provinces which have received no offense from the mother country, to whom she has granted a participation of a free constitution, and to whom she has extended all the rights and prerogatives of Spanish citizens? In vain will a parallel be attempted to be drawn between the emancipation of this republic and that which the Spanish rebels attempt."

And then there was the notion of a party in Spanish America favorable to the mother country, just as there was a notion of a party favorable to the North among the Southern States:

"Where are those governments that ought to be recognized? Where are the pledges of the stability? Where the proofs that those provinces will not return to a union with Spain, when so many of their inhabitants desire it? And, in fine, where the right of the United States to sanction and declare legitimate a rebellion, without cause, and the event of which is not even decided?"

It was quite clear from these precedents in the history of the United States, that the American government recognized the revolted South American colonies long before the mother country acquiesced in their independence, and that war was not the consequence. We did not want war—we wanted peace. Our people had suffered too much in consequence of the hostilities in America—they had starved too long already—they would be driven to still greater distress next winter if the war continued, and the resources of the country would be exhausted if this great strain were continued; and there were no hopes of a supply of cotton except from the Southern States of America. These were grounds which gave us a title to go to the American people and tell them our opinion about this war. The value of recognition was this: It was a distinct statement on the part of two great nations that in their opinion the war was hopeless. It was a judgment by a tribunal to which he believed even the American people would give way. His honorable friend the member for Bradford (Mr. Forster) tried to prove that the efforts at mediation last year only made the war party stronger. But the state of affairs was very different then, and all the great preparations which had been made at that time had as yet failed. Charleston had been attacked, but with so little success that the attack had not been renewed. Virginia had been four times invaded, and now people were looking to the invasion of Pennsylvania. The siege of Vicksburg was drawing to a close not favorable to the North. In every direction there were grounds for great discouragement, and it was evident from the last news that the faith of the people was shaken, and that they were wavering in their views of the war. There was a democratic party who had nominated as governor an avowed advocate for peace in one State, and the provost marshal in another had been shot for attempting to enforce the conscription. At this particular crisis public opinion in America was wavering, and if they now received the judgment of two great countries, expressed in an official and solid form, that they were fighting for a cause which was hopeless, and that the independence of the South was definitively established, an enormous blow would be given to the war party in America. It was evident that the people in the Northwestern States had not very much information to go upon in relation to the war. The newspapers all wrote under the terror of a military dictator, and their news passed through a censorship. Thus small successes were magnified, and failures were glossed over. But nothing would tend so greatly to make them distrust the promises of those contractors who were making fortunes by the war as the announcement that France and England—not merely Frenchmen and Englishmen, but the respective governments—looking at the enormous interests with which they had to deal, had come to the conclusion that the war was hopeless, and that it was vain for the North to persist in it. There was one point on which the minister of the Crown who had spoken did not touch. It was an extraordinary fact that the Chancellor of the Exchequer had not alluded to

the remarkable statement which the House had heard respecting the policy of the Emperor of the French. But such disclosures as these could not be disposed of by silence. His honorable friend (Mr. Forster) had talked of the Emperor of the French appointing a second ambassador to the House of Commons. But the desire of his honorable and learned friend (Mr. Roebuck) was not to be the ambassador of France, but to refute the unjustifiable and baseless rumors which, for the defense of their own policy, the government had circulated as to the views of the Emperor of the French. ["No, no."] Then, if they were not true, let the under secretary of state for foreign affairs give a formal contradiction to the statements of the honorable and learned member for Sheffield. It had been distinctly stated that last year the government received from the Emperor of the French an offer to mediate in the United States; that that offer was transmitted to Lord Lyons, who betrayed the secret—he of course imputed nothing like treason to Lord Lyons—to Mr. Seward; that Mr. Seward remonstrated with the Emperor of the French, and that the first definite reply which the Emperor received to his offer to mediate was the complaint which arrived from his minister at Washington. To these statements an answer must be given. They all knew that the Emperor of the French was a prudent and sagacious sovereign, and he would not have taken the strange and extraordinary course of communicating directly with the House of Commons unless he had been driven to it by the treatment which he had received from the Foreign Office. The absence of the noble viscount made the course of the government in giving any explanation very difficult, and it was easy to see how little able they were to give any definite outline of their policy in the absence of their great head. But this debate would not be complete and the public would not be satisfied unless all the statements of his honorable and learned friend as to what he heard with his own ears from the Emperor of the French received a full explanation. They had been told of statements made that night in the Lords respecting statements in their House—

Mr. W. E. FORSTER said that the report, which was very current, had been contradicted in another place, the noble earl the secretary of state for foreign affairs having stated that Baron Gros had waited on him to tell him that the rumors were entirely without foundation.

LORD ROBERT CECIL. That important information might have been brought down to this House also by the under secretary for foreign affairs. The House had more than once had reason to complain of the position to which it was reduced by the system of putting all the chief secretaries into the other House, and all the under secretaries into this. The result was, that almost every important explanation of foreign policy had been given in the other House of Parliament, and had been almost invariably refused here. At all events, he hoped the same information would be given of the recent negotiations between this country and France. The Emperor of the French had proposed a course by which the southern ports might be opened, and the English government now stood as the single obstacle to the recognition of the South, which would procure food for their starving operatives. They must make a much more complete defense of their position on this question than was afforded by the vague and loose theories dealt in by the Chancellor of the Exchequer. They must give some clear reasons why they refused to act upon the frank and open offers of the Emperor of the French; and they must justify themselves for following a policy which had already been productive of such tremendous misery to their own countrymen.

Mr. BRIGHT. I will not attempt to follow the noble lord in the labored attack which he has made upon the treasury bench, for these two reasons: That he did not appear to me very much to understand what it was he was charging them with; and, again, I am not in the habit of defending gentlemen who sit on that bench. I will address myself to the question before the House, which I think the House generally feels to be very important, although I am quite satisfied that it does not feel it to be a practical one. Neither do I think that the House will be disposed to take any course in support of the honorable gentleman who introduced the resolution now before us. We sometimes are engaged in these discussions, and have great difficulty to know what we are about, but the honorable gentleman left us in no kind of doubt when he sat down. He proposed a resolution, in words which, under certain circumstances and addressed to certain parties, might not end in offensive or injurious consequences. But, taken in connection with his character and with the speech he has made to-night, and with the speech he has recently made elsewhere upon this subject, I may say, that he would have come to about the same conclusion if he had proposed to address the Crown inviting the Queen to declare war against the United States of America. The Chancellor of the Exchequer, who is supposed not to be very zealous in the particular line of opinion that I have adopted, addressed the honorable gentleman in the smoothest language possible, but still he was obliged to charge him with the tone of bitter hostility of his speech. On a recent occasion the honorable member addressed some members of his constituency—I do not mean his last speech, I mean the speech addressed to them in August, last year—in which he entered upon a course of prophecy which, like most prophecies in our day, does not happen to have come true. But he said then what he said to-night, that the American people and government were over-

bearing. He did not tell them that the government of the United States had, almost during the whole of his lifetime, been conducted by his friends of the South. He said that if they were divided they would not be able to bully the whole world; and he made use of these expressions: "The North will never be our friends; of the South you can make friends—they are Englishmen—they are not the scum and refuse of the world."

Mr. ROXBURCK: Allow me to correct that statement. What I said, I now state to the House, that the men of the South were Englishmen, but that the army of the North were composed of the scum of Europe.

Mr. BRIGHT. I take, of course, that explanation of the honorable and learned gentleman with this explanation from me, that there is not, so far as I can find, any mention near that paragraph, and I think there is not in the speech, a single word about the army. [Mr. ROXBURCK. I assure you I said that.] Then I take it for granted that the honorable and learned gentleman said that, or that if he said what I have read, he greatly regrets. [Mr. ROXBURCK. No, I did not say it.] The honorable and learned gentleman in his resolution speaks of other powers. Well, he has unceremoniously got rid of all the powers but France, and he comes here to night with the story of an interview with a man whom he describes as the great ruler of France—tells us a conversation, asks us to accept the lead of the Emperor of the French on, I will undertake to say, one of the greatest questions that was ever submitted to the British Parliament. But it is not long since the honorable and learned gentleman held very different language. I recollect in this House, only about two years ago, that the honorable and learned gentleman said, "I hope I may be permitted to express in respectful terms my opinion, even though it should affect so great a potentate as the Emperor of the French. I have no faith in the Emperor of the French." On another occasion the honorable and learned gentleman said—not, I believe, in this House, "I am still of opinion that we have nothing but animosity and bad faith to look for from the French Emperor." And he went on to say, that still, though he had been laughed at, he had adopted the patriotic character of "Tear-em," and was, still at his post. Well then, sir, when the honorable and learned gentleman came back, I think from his expedition to Cherbourg, does the House recollect the language he used on that occasion—language which, if it expressed the sentiments which he felt, at least, I think he might have been content to have withheld. If I am not mistaken, referring to the salutation between the Emperor of the French and the Queen of these Kingdoms, he said—"When I saw his perjured lips touch that hallowed cheek," and now, sir, the honorable and learned gentleman has been to Paris, introduced there by the honorable member for Sunderland, and he has become, as it were, in the palace of the French Emperor, a co-conspirator with him to drag this country into a policy which I maintain is as hostile to its interests as it would be degrading to its honor. But then the high contracting parties, I suspect, are not agreed, because I will say this in justice to the French Emperor, that there has never come from him in public, nor from any one of his ministers, nor is there anything to be found in what they have written, that is tinged in the smallest degree with that bitter hostility which the honorable and learned gentleman has constantly exhibited to the United States of America, and their people. France, if not wise in this matter, is at least not unfriendly. The honorable and learned member, in my opinion, indeed I am sure, is not friendly, and I believe he is not wise. But now, on this subject, without speaking disrespectfully of that great potentate, who has taken the honorable and learned gentleman into his confidence, I must say that the Emperor runs the risk of being far too much represented in this House. We have got two—I will not call them envoys extraordinary, but most extraordinary. And if report speaks truly, even they are not all. The honorable member for the King's County, (Mr. Hennessey,)—I do not see him in his place—came back the other day from Paris, and there were whispers about that he had seen the great ruler of France, and that he could tell everybody in the most confidential manner that the Emperor was ready to make a spring at Russia for the sake of delivering Poland, and that he only waited for a word from the prime minister of England. Well, I do not understand the policy of the Emperor, if these new ministers of his tell the truth. For, sir, if one gentleman says that he is about to make war with Russia, and another that he is about to make war with America, I am compelled to look at what he is already doing. I find that he is holding Rome against the opinion of all Italy. He is conquering Mexico by painful steps, every step marked by devastation and blood. He is warring, in some desultory manner, it may be, in China; and for aught I know, he may be about to do it in Japan. Well, I say that if he is to engage at the same moment in dismembering the great eastern empire and the great western republic, he has more ambition than Louis XIV, more daring than the first of his name; and that if he ventures on these great transactions, his dynasty will fall, and he will be buried in the ruins of his own ambition. But, sir, I understand that we have not heard all the story from Paris; and further, it seems to me not at all remarkable, seeing that the secret has been confided to two persons, that we have not heard it correctly. I saw the member for Sunderland near me, and I noticed that his face underwent remarkable

contortions during the speech of the honorable and learned gentleman, and I felt perfectly satisfied that he did not agree with what his colleague was saying. I am told there is in existence a little memorandum which contains an account of what was said and done at that interview, and before the discussion closes we shall no doubt have that memorandum produced, and from it know how far these two gentlemen are agreed. I now come to the proposition which the honorable and learned gentleman has submitted to the House, and which he has already submitted to a meeting of his constituents at Sheffield. At that meeting, on the 27th of May, the honorable and learned gentleman used these words: "What I have to consider is, what are the interests of England; what are for her interests I believe to be for the interests of the world." Now, leaving out of consideration the latter part of that statement, if the honorable and learned gentleman will keep to the first part of it, then what we have now to consider in this question is, what is for the interest of England. But the honorable and learned gentleman has put it in a way to-night almost as offensively as he did before at Sheffield, and has said that the United States would not bully the world if they were divided, and sub-divided—for he went so far as to contemplate division into more than two independent sections. Well, I say that the whole of his case rests upon a miserable jealousy of the United States, or on what I may term a base fear. It is a fear which appears to me just as groundless as any of those panics by which the honorable and learned gentleman has helped to frighten the country. There never was a state in the world which was less capable of aggression with regard to Europe than the United States of America. I speak of its government, of its confederation, of the peculiarities of its organization; for the House will agree with me that nothing is more peculiar than the fact of the great power which the separate States, both of the North and South, exercise upon the policy course of the country. I will undertake to say that unless in a question of overwhelming magnitude which would be able to unite any people, it would be utterly hopeless to expect that all the States of the American Union would join together to support the central government in any plan of aggression on England or any other country of Europe. Besides, nothing can be more certain than this, that the government which is now in power, and the party which has elected Mr. Lincoln to office, is a moral and peaceable party, which has been above all things anxious to cultivate the best possible state of feeling with regard to England. The honorable and learned gentleman, of all men, ought not to entertain this fear of the United States aggression, for he is always boasting of his readiness to come into the field himself. I grant that it would be a great necessity indeed which would justify a conscription in calling out the honorable and learned gentleman; but I say he ought to consider well before he spreads these alarms among the people. For the sake of this miserable jealousy, and that he may help to break up a friendly nation, he would depart from the usages of nations, and create an everlasting breach between the people of England and the people of the United States of America. He would do more—and notwithstanding what he has said to-night, I may put this as my strongest argument against his case—he would throw the weight of England into the scale in favor of the cause of slavery. With respect to the law of nations, I will not take up the time of the House after the careful argument of the noble lord the member for Huntingdon; but I will say that it is impossible for anybody to take up a pamphlet, published the other day by Mr. F. W. Gibbs, and read it, without admiring the style in which it was written, and being absolutely convinced with respect to this case, that is, if this be a case in which precedents have any effect whatever. I want to show the honorable and learned gentleman that England is not interested in the course he proposes we should take; and when I speak of English interests, I mean the commercial interests, the political interests, and the moral interests of the country. And first with regard to the supply of cotton, in which the noble lord the member for Stamford takes such prodigious interest. I must explain to the noble lord that I know a little about cotton. I happen to have been engaged in that business, not all my life, for many of those who hear me have seen me here for twenty years, but my interests have been in it, and at this moment the firm of which I am a member have several mills which have been at a stand for nearly a year owing to the absolute impossibility of working under the present condition of the supply of cotton. I live among a people who live by this trade, and there is no man in England who has a more direct interest in it than I have. Before the war the supply of cotton was deficient and costly, and every year it was becoming more costly, for the supply did not keep pace with the demand. The point that I am going to argue is this: I believe that the war that is now raging in America is more likely to abolish slavery than not, and more likely to abolish it than any other thing that can be proposed in the world. I regret very much that the pride and passion of men are such as to justify me in making such a statement. The supply of cotton under slavery must always be insecure. The House felt so in past years; for at my recommendation they appointed a committee, and but for a foolish minister they would have appointed a special commission to India at my request, and I feel the deepest regret that they did not do so. Is there any gentleman in this House who will not agree with me in this, that it would be far better for our great Lancashire industry that our supply of cotton

should be grown by free labor rather than by slave labor? Before the war the whole number of negroes engaged in the production of cotton was about one million, that is, about one-fourth of the whole of the negroes in the slave States. The annual increase in the number of negroes growing cotton was about twenty-five thousand, only two and a half per cent. It was impossible for the Southern States to keep up their growth of sugar, rice, tobacco, and their ordinary slave productions, and at the same time to increase the growth of cotton more than at a rate corresponding with the annual increase of negroes. Therefore you will find that the quantity of cotton grown, taking ten years together, increased at the rate of little more than one hundred thousand bales a year. But that was nothing like the quantity which the world required. That supply could not be materially increased, because the South did not cultivate more than probably one and a half per cent. of the land which was capable of cultivation for cotton. The great bulk of the land in the Southern States is uncultivated; ten thousand square miles are employed in the cultivation of cotton, but there are six hundred thousand square miles, or sixty times as much land, which are capable of being cultivated for cotton. It was, however, impossible that that land should be so cultivated, because, although you had climate and sun, you had not labor. The institution of slavery forbade free-labor men in the North to come to the South, and every emigrant that landed in New York from Europe knew that the slave States were no States for him, and therefore he went North or West. The laws of the United States, the sentiments of Europe and the world, being against any opening of the slave trade, the planters of the South were shut up, and the annual increase in the supply of cotton could advance only in the same proportion as the annual increase in the number of their negroes. There is one other point with regard to that matter which is worth mentioning. The honorable and learned gentleman the member for Sheffield will understand it, although on some points he seems to be peculiarly dark. If a planter in the southern States wanted to grow one thousand bales of cotton a year he would require about two hundred negroes. Taking them at \$500 or £100 each, which is not more than half the price of a first-class hand, the cost of the two hundred would be £20,000. To grow one thousand bales of cotton a year, you require not only to get hold of an estate, machinery, tools, and other things necessary to carry on the cotton-growing business, but you must find a capital of £20,000 to buy the actual laborers, by whom the plantation is to be worked; and therefore, as every gentleman will see at once, this great trade, to a large extent, was shut up in the hands of men who were required to be richer than would be necessary if slavery did not exist. Thus the plantation business, to a large extent, became a monopoly, and therefore, even in that direction the production of cotton was constantly limited and controlled. I was speaking to a gentleman the other day from Mississippi. I believe no man in America or in England is more acquainted with the facts of the case. He was for many years senator for the State of Mississippi. He told me that every one of these facts was true; and he said that he had no doubt whatever that in ten years after freedom in the South, or after freedom in conjunction with the North, the production of cotton would be doubled, and cotton would be forwarded to the consumers of the world at a much less price than we have had it for many years past. I shall turn for a moment to the political interest, to which the honorable and learned gentleman paid much more attention than to the commercial. The more I consider the course of this war, the more I come to the conclusion that it is improbable in future that the United States will be broken into separate republics. I do not necessarily come to the conclusion that the North will conquer the South. But I think the conclusion to which I am more disposed to come now than at any time since the breaking out of the war is this: that if a separation should occur for a time, still the interests, the sympathies, the sentiments, the necessities of the whole continent, and its ambition also, which seems to some people to be a necessity, render it highly probable that the continent will still be united under one central government. I may be quite mistaken. I do not express that opinion with any more confidence than honorable gentlemen have expressed theirs in favor of a permanent dissolution; but now, is not this possible, that the union may be again formed on the basis of the South? There are persons who think that possible. I hope it is not, but we cannot say that it is absolutely impossible. Is it not possible that the northern government might be beaten in their military operations? Is it not possible that by their own incapacity they might be humiliated before their own people? And is it not even possible that that party which you please to call the peace party in the North, but which is in no sense a peace party, should unite with the South, and that the Union should be reconstituted on the basis of southern opinions and of the southern social system? Is it not possible, for example, that the southern people, and those in their favor, should appeal to the Irish population of America against the negroes, between whom there has been but little sympathy and little respect; and is it not possible they should appeal to the commercial classes of the North, and the rich commercial classes in all countries, who, from the uncertainty of their possessions and the fluctuation of their interests, are rendered always timid and almost always corrupt—is it not possible, I say, that all these might prefer the union of their whole country

upon the basis of the South rather than that disunion, which many members of this House look upon with so much apparent satisfaction? If that should ever take place—but I believe, with my honorable friend below me, (Mr. W. E. Forster,) in the moral government of the world, and therefore I cannot believe that it will take place—but if it were to take place, with their great armies, and with their great navy, and their almost unlimited power, they might offer to drive England out of Canada, France out of Mexico, and whatever nations are interested in them out of the islands of the West Indies; and you might then have a great state built upon slavery and war, instead of that free state to which I look, built up upon an educated people, upon general freedom, and upon morality in government. Now there is one more point to which the honorable and learned gentleman will forgive me if I allude; he does not appear to me to think it of great importance, and that is, the morality of this question. The right honorable gentleman, the Chancellor of the Exchequer, and the honorable gentleman who spoke from the bench behind, and I think the noble lord, if I am not mistaken, referred to the carnage which is occasioned by this lamentable strife. Well, carnage, I presume, is the accompaniment of all war. Two years ago the press of London made themselves merry, if I may use such a term of the newspapers, at the battles of the United States, in which nobody was killed, and few were hurt. There was a time when I stood up in this House and painted out the horrors of war. There was a war waged by this country in the Crimea; and the Chancellor of the Exchequer, as with an uneasy conscience, is constantly striving to defend that struggle. That war, for it lasted about the same time that the American war has lasted, at least destroyed as many lives as are estimated to have been destroyed in the United States. My honorable friend, the member for Dundee, who, I think, is not in the House, made a speech in Scotland some time last year, in which he gave the numbers which were lost by Russia in that war. An honorable friend near me observes that some people do not reckon the Russians for anything. I say, that if you will add the Russians to the English, and the two to the French, and the three to the Sardinians, and the four to the Turks, that more lives were lost in the invasion of the Crimea, in the two years that it lasted, than have been lost now in the American war. That is no defense of the carnage of the American war at all; but let honorable gentlemen bear in mind that when I protested against the carnage in the Crimea, for an object which few could comprehend and nobody could fairly explain, I was told that I was actuated by a morbid sentimentality. Well, if I was converted, and if I view the mortality in war with less horror than I did then, it must be attributed to the arguments of honorable gentlemen opposite, and from the treasury bench; but the fact is that I view this carnage just as I viewed that, with only this difference, that while our soldiers perished three thousand miles from home in a worthless and indefensible cause, these men—the soldiers of the United States—are on their own soil, and every man of them knows for what he enlisted, and for what end he is to fight. Now, I will ask the right honorable gentleman the Chancellor of the Exchequer, and those who are of opinion with him on this question of slaughter in the American war—a slaughter which I hope there is no honorable member here and no person out of this House that does not in his calm moments look upon with grief and horror—to consider what was the state of things before the war. It was this—that every year in the slave States of America there were one hundred and fifty thousand children born into the world—born with the badge and doom of slavery—born to the liability by law, and by custom, and by the devilish cupidity of man—to the lash, and to the chain, and to the branding-iron, and to be taken from their families and carried they knew not where. I want to know whether you feel as I feel upon this question. When I can get down to my home from this House, I find half a dozen little children playing upon my hearth. How many members are there who can say with me that the most innocent, the most pure, the most holy joy, which in their past years they have felt, or in their future years they have hoped for, has not arisen from contact and association with our precious children? Well, then, if that be so—if when the hand of death takes one of these flowers from our dwelling, our heart is overwhelmed with sorrow, and our household is covered with gloom—what would it be if our children were brought up to this infernal system—one hundred and fifty thousand every year brought into the world in these slave States, among these “gentlemen,” among this chivalry, among these men that we can make our friends? Do you forget the thousand-fold griefs and the countless agonies which belonged to the silent conflict which slavery waged with human rights before the war began? It is all very well for the honorable and learned gentleman to tell me, to tell this House—he will not tell the country with any satisfaction to it—that slavery, after all, is not so bad a thing. The brother of my honorable friend, the member for South Durham, told me that in North Carolina he himself saw a woman whose every child, ten in number, had been sold when they grew up to that age at which they would fetch a price to their master. I have not heard a word to-night of another question—I mean the proclamation of the President of the United States. The honorable and learned gentleman spoke somewhere in the country, and he had not the magnanimity to abstain from a statement which I was going to say he must have known had no real weight. I can

make all allowance for the passion, and I was going to say the malice—but I will say the ill-will of the honorable and learned gentleman; but I make no allowance for his ignorance. I make no allowance for that, because if he is ignorant, it is his own fault, for God has given him an intellect which ought to keep him from ignorance on a question of this magnitude. I now take that proclamation. What do you propose to do? You propose by your resolution to help the South, if possible, to gain and sustain its independence. Nobody doubts that. The honorable and learned gentleman will not deny it. But what becomes of the proclamation? I should like to ask any lawyer in what light we stand as regards that proclamation? To us there is only one country in what was called the United States—there is only one President—there is only one general legislature—there is only one law; and if that proclamation be lawful anywhere—[Mr. Roebuck: "Hear!"]—we are not in a condition to deny its legality, because at present we know no President Davis, nor do we know the men who are about him. We have our consuls in the South, but recognizing only one legislature, one President, one law. So far as we are concerned, that proclamation is a legal and effective document. I want to know—I want to ask you, the House of Commons, whether you can turn back to your own proceedings in 1834, and trace the praises which have been lavished upon you for thirty years by the great and good men of other countries—and whether after what you did at that time, you believe that you will meet the views of the thoughtful, moral, and religious people of England, when you propose to remit to slavery three million of negroes in the Southern States, who, in our view, and regarding the proclamation of the President of the United States as a legal document, are certainly and to all intents and purposes now legally free? ["Oh!"] The honorable and learned gentleman may say "Oh," and shake his head lightly, and laugh at this. He has managed to get rid of those feelings under which all men, black and white, bless the gift of freedom. He has talked of the cant and hypocrisy of the men who have pleaded for the negro. Was Wilberforce, was Clarkson, was Buxton—I might run over the whole list—were these men hypocrites, and had they nothing about them but cant? I could state something about the family of my honorable friend below me, (Mr. Forster,) which I almost fear to state in his presence, but his revered father—a man unsurpassed in character—not equaled by many in intellect, and approached by few in service, laid down his life in a slave state in America, while carrying to the governors and legislatures of every slave State the protest of himself and his sect against the enormity of that odious system. In conclusion, sir, I have only this to say, that I wish to take of this question a generous view—a view, I say, generous with regard to the people with whom we are in anity, whose minister we receive here, and who receive our minister in Washington. We see that the government of the United States has for two years past been contending for its life, and we know that it is contending necessarily for human freedom. That government affords the remarkable example—offered probably for the first time in the history of the world of a great government coming forward as the organized defender of law, freedom, and equality. ["Oh!" and cheers.] Surely honorable gentlemen opposite cannot be so ill-informed as to say that the revolt of the southern States is in favor of freedom and equality. In Europe often, and in some parts of America, when there has been insurrection, it has been of the suffering generally against the oppressor, and rarely has it been found, and not more commonly in our history than in the history of any other country, that the government has stepped forward as the organized defender of freedom—of the wide and general freedom of those under their rule. With such a government, in such a contest, with such a foe, the honorable and learned gentleman, the member for Sheffield, who professes to be more an Englishman than most Englishmen, asks us to throw into the scale against them the weight of the hostility of England. I have not said a word with regard to what may happen to England if we go into war with the United States. It will be a war on the ocean—every ship that belongs to the two nations will, as far as possible, be swept from the seas; but when the troubles in America are over—be they ended by restoration of the Union or by separation—that great and free people, the most instructed in the world—[Loud cries of "No!"]—there is not an American to be found in the New England States who cannot read and write, and there are not more than three men in a hundred in the whole northern States who cannot read and write—and those who cannot read and write are those who have recently come from Europe—I say the most instructed people in the world, and the most wealthy—if you take the distribution of wealth among the whole people—will have left in their hearts a wound which probably a century may not heal, and the posterity of some of those who now hear my voice may look back with amazement, and I will say with lamentation, at the course which was taken by the honorable and learned gentleman, and by such honorable members as may choose to follow his leading. ["No, no."] I suppose the honorable gentlemen who can cry "No," will admit that we sometimes suffer from some errors of our ancestors. There are few persons who will not admit that if their fathers had been wiser, their children would have been happier. Sir, we know the cause of this revolt, its purposes, and its aims. Those who made it have not left us in darkness respecting their intentions—but what it is to accomplish is still hidden from

our sight, and I will abstain now, as I have always abstained with regard to it, from predicting what is to come. I know what I hope for—and what I shall rejoice in—but I know nothing of the future that will enable me to express a confident opinion. Whether it will give freedom to the race, which, for generations past, white men have trampled in the dust, and whether it will purify a nation steeped in crime in connection with its conduct to that race, is known only to the Supreme. In his hands are alike the breath of men and the life of states. I am willing to commit to him the issue of this dread contest; but I implore of him, and I beseech this House, that my country may lift nor hand nor voice in aid of the most stupendous act of guilt that history has recorded in the annals of mankind.

Mr. PERCY WYNNDHAM believed there were thousands of men in the Northern States who would be glad to hear a voice from Europe calling upon them to acknowledge the independence of the South. They knew they were engaged in a hopeless contest, and they had no wish, like so many of their countrymen, to pursue an unholy war for the sake of pecuniary gain. He concluded by moving the adjournment of the debate.

[Here there were loud and general cries for "Mr. Lindsay." The honorable member rose from his seat, but sat down without addressing the House.]

SIR GEORGE GREY. If the honorable member for Sunderland (Mr. Lindsay) wishes to address the House, I should be sorry to interfere with him, and I think we may go on for an hour longer. However, as there is a motion for the adjournment of the debate, I may take this opportunity of giving an answer to the question so pointedly put by the noble lord, the member for Stamford, (Lord Robert Cecil.) I shall say nothing as to the extraordinary fact of a member of this House charging himself, after personal communication with a foreign sovereign, with the duty of explaining, in his place, the views and intentions of that sovereign relative to a public question of great interest and importance. But the honorable and learned member for Sheffield (Mr. Roebuck) has done more than that—he has made himself the channel of conveying to this House the complaint of a foreign sovereign against the government of his own country, charging us with a breach of courtesy in connection with communications alleged to have passed between the French government and ourselves. The noble lord, the member for Stamford, attached more importance to the statement of the honorable and learned member than the rest of the House seemed disposed to do, and complained that no explicit answer had been given to it, trusting that before the debate closed to-night the government would make some more satisfactory explanation. I am utterly unable to give any explanation whatever of the extraordinary statement of the honorable and learned member for Sheffield. All I can say is, that what he has stated is at variance with the information which her Majesty's government possesses and with the communications they have received from the government of France. The noble lord complains that information on the subject has been withheld from Parliament. It will be recollected that this evening, in reply to a question from the honorable member for Bradford, the under secretary for foreign affairs stated that no communication, meaning, of course, no recent communication, not referring to what took place last year, had been received by the government of France from her Majesty's government, proposing either mediation with regard to the war in America or recognition of the Southern States. Since that statement was made to the House, it has come to the knowledge of many members that it has been stated elsewhere that this afternoon, just before the meeting of the House, Baron Gros waited upon Lord Russell, and informed him that he had not been instructed to make any such communication to her Majesty's government as that which has been spoken of. My honorable friend did not know of that circumstance when he answered the question this evening. So far from withholding any information from the House, he stated, upon the authority of Earl Russell, that no such communication had been received from the Emperor of the French. I can only say that I am utterly unable to explain the discrepancy between the honorable and learned member for Sheffield's statement, and the fact that her Majesty's government received no such communication. It has been stated that the communication which was well known to have been made last year to her Majesty's government on the part of the Emperor of the French, proposing a mediation between the contending parties in America, was transmitted by Earl Russell to Lord Lyons, and by Lord Lyons handed to Mr. Seward, by which means Mr. Seward received information which would otherwise have been withheld from him respecting the Emperor's proposal to her Majesty's government. Now, I know that no secret was made at the time that such a proposal had been made by the Emperor of the French to her Majesty's government. It was announced by the newspapers that that dispatch had been taken into consideration by her Majesty's government, and answered in terms of the courtesy of which I am sure the Emperor of the French had no reason to complain—and never has complained. I have no doubt that that correspondence, that dispatch in fact, was communicated by Earl Russell to Lord Lyons in order that, representing this country as he did at Washington, he might know what was going on in Europe upon a matter in which this country was concerned. So far from a secret existing in regard to that dispatch, even before Parliament met that correspondence was laid on the table of the House. It

was published in the newspapers and afterward laid before Parliament, and therefore it is preposterous to talk now of any secrecy in connection with it. I must say that Lord Lyons is incapable of the conduct which has been imputed to him. He is held in high esteem by the government of the United States, to which he is accredited, and I am sure that in none of his acts would he be guilty of anything approaching to a breach of confidence toward the government of France or any other foreign country. Lord Robert Cecil explained that he had no intention of imputing to Lord Lyons any act contrary to his official duty. He had only repeated the statement made earlier in the evening by the honorable and learned member for Sheffield. Whatever Lord Lyons might have done was no doubt done in strict conformity with the orders he had received from the foreign office; and any imputation of a breach of the *entente cordiale* must lie at the door, not of Lord Lyons, but of the foreign minister who instructed him.

Mr. NEWDEGATE said he had on a previous occasion directed the attention of the House to the ill effects of unauthorized diplomacy. They all remembered the deputation to St. Petersburg. The representations of that deputation misled the Emperor Nicholas, and produced the calamities of the Crimean war. What were they to think of the conduct of the honorable and learned member for Sheffield? He went to Paris, and, on his own authority, negotiated with the Emperor of the French; and now he made a motion in that House, based upon the conversation which he had with the Emperor. The people of this country, most assuredly, would not be satisfied if the House approved a motion which had been placed on the journals of the House at the instance of a foreign potentate. Moreover, beyond doubt, such a resolution, supported by such a speech as that with which it had been introduced, would give universal offense in America. Having himself been in the United States, and still remembering the friendship there manifested toward him, and his acquaintance with Americans, he was perfectly confident that if anything was more calculated to defeat the object they all desired—the maintenance of peaceful relations and restoration of peace in America—it was this motion and the speech of the honorable member for Sheffield. He (Mr. Newdegate) should feel it his duty to vote against the motion.

LORD ROBERT MONTAGU asked when it would be convenient to resume the debate.

SIR GEORGE GREY. It is for the honorable and learned member for Sheffield to answer that question.

Mr. ROEBUCK. On Thursday next, upon the motion for going into committee of supply.

Debate adjourned until to-morrow.

APPENDIX No. XXVII.

DEBATE IN THE HOUSE OF COMMONS OF JULY 13, 1863, ON THE SUBJECT OF THE "RECOGNITION OF THE SOUTHERN CONFEDERACY.*"

[From Hansard's Parliamentary Debates, vol. 173, pp. 661-673.]

HOUSE OF COMMONS, July 13, 1863.

UNITED STATES—RECOGNITION OF THE SOUTHERN CONFEDERACY.

Order for resuming adjourned debate discharged.

On order for resuming adjourned debate on amendment proposed to question, [June 30.]

Mr. ROEBUCK. Sir, I rise for the purpose of moving that this order be now read, in order that it may be discharged. Sir, I brought forward the motion under the feeling that I was about to ask the House to take a step which would be likely to put an end to the terrible carnage now going on in North America, and which would also be of infinite advantage to the commercial interests of Great Britain. For making this motion I have been subjected to much obloquy. That obloquy came from a very noisy and not very wise party, and I must say, sir, that my present determination has not been influenced thereby. The noble lord at the head of the government, however, has stated that the continuance of the debate would be an impediment in the way of the good government of the country and its interests. Feeling that respect which is due to the noble lord's belief and wishes, I have induced my honorable friend opposite (Mr. Lindsay) to forego his own desire in the matter. When the noble lord sat down on Friday last, he and I were perfectly, or at least very nearly satisfied with what the noble lord had stated; and if nothing more had been said, there would have been an end of the matter. But, sir, official arrogance is a plant of portentously rapid growth. The honorable gentleman the under secretary for foreign affairs has thought fit to bring a charge against my honorable friend which he believed his honor called on him to answer. A little cool reflection taught him that insinuations like these, coming from a quarter such as this, did not need to be regarded. My honorable friend then felt that the considerations submitted by the noble lord at the head of the government were so grave that he ought not to give way to any feeling on his own part of wounded pride, as I may call it, and solely to regard the interest of his country, as pointed out by the noble lord. And now, sir, when the matter is about to pass entirely from my control and my dealings with it, there is one observation I would make to the noble lord. He has at the present moment the greatest responsibility on his shoulders. It has been said that the time has not yet come for the consideration of this question. I have yielded to that suggestion, but let the noble lord bear in mind that there are two dangers before us which the government and the country will have to meet. There is the possibility of a reconstruction of the Union upon a southern basis, and there is the possibility of an acknowledgment of the confederate South by the Emperor of the French alone. These are two great dangers for England. The noble lord will, I have no doubt, with his long experience, fully justify the confidence of the people in his consideration of these two great questions. I leave them, sir, without hesitation in his hands, though I must say that my own feelings are against the withdrawal of this subject at the present time from the consideration of the House. England and English interests, it seems to me, demand the decision of the House, and it is only under a feeling of great respect for the noble lord that I now withdraw my motion.

Moved,

"That the order for resuming the adjourned debate on amendment proposed to question [30th June] be read, in order to its being discharged."

Mr. LINDSAY. Sir, I wish to say only a few words. There seems to have been some great misunderstanding on this question. The motion now to be withdrawn is to the

* Transmitted with dispatch No. 452, from Mr. Adams to Mr. Seward, July 16, 1863, (see vol. I, p. 491.)

effect that the House invites her Majesty to enter into negotiations with other powers for the recognition of the Southern States of North America. That motion stood on the paper for about six weeks. I heard a rumor ten days or so before the motion was to come on, that the Emperor of the French had changed his mind in regard to the expediency of then recognizing the South. How that rumor originated I know not, but it was very general. I did not, however, pay any attention to it. My honorable friend also heard a similar rumor, and wrote me a note asking me to ascertain, if I could, what truth there was in it; because, as he said, it was very important that he should know, lest when he brought forward his motion, some member of the government should rise and ask, "What is the good of this motion when one of the chief powers is not prepared to join in the recognition of the South?" My honorable friend added, that he would like, if he could, to see the Emperor and learn the fact from himself. I wrote on the subject to a friend in Paris without any idea that my letter and its inclosure would reach the Emperor. The letter, however, did get to his Majesty; and I received an answer stating that I might give an unqualified contradiction to the rumor, the Emperor adding, "I have not changed my mind as to the desirability of recognizing the South, and I shall be glad to see Mr. Lindsay and Mr. Roebuck on the subject should they visit Paris." I handed that note to my honorable and learned friend, telling him that he could read it in the course of the debate if the rumor were referred to in the House. My honorable and learned friend, however, thought that the note would not be sufficient. "I should like," he said, "to ascertain the fact for myself;" adding, "the House will believe me." That was upon the 19th of June. I replied that in my opinion the note would be enough, and that the House would believe it had come from an authoritative source; but the honorable and learned gentleman still persisted in his desire to go to Paris. I must say, considering the high authority through whom the contradiction was received, I had no wish to trouble the Emperor; but as my honorable and learned friend was anxious to learn his intention from his Majesty himself, as he thought it important for the success of his motion that he should do so, and as I shared the anxiety to see this motion carried, I accompanied my honorable friend, at great inconvenience, to Paris. An audience was at once granted to us; but I presume the House does not for a moment suppose that I would make public, beyond what is, under the circumstances, utterly requisite, any conversation which the Emperor of the French has been pleased to hold with me, either at that interview or at any other, without his special permission. After what has taken place, I may therefore merely state that during the conversation, which lasted a considerable time, my honorable and learned friend pointed out to the Emperor the importance of having it clearly understood that if it should be the pleasure of her Majesty to negotiate with him on the subject of the recognition of the Southern States, he would be prepared to enter into that negotiation, and my honorable and learned friend asked that he might be permitted to make a statement in the House to that effect. His Majesty replied, "Take any means you think proper to let it be known that I am prepared to negotiate, and that there is no truth in the rumor prevalent in England in regard to any change of my views on this question." All the Emperor meant, as far as I understood him, was, that if the House of Commons should pray her Majesty to address him on the subject of the recognition of the Southern States, he would be only too happy to enter into negotiations with that object, believing, as he did, that if the great powers thought it advisable to recognize the southern confederacy, the moral effect would be such as to stay the terrible carnage now going on in America. That is the substance of what took place. So far as I am concerned, I was quite satisfied with the statement of the noble lord at the head of the government on Friday evening, although, as the House is aware, the course pursued by my honorable and learned friend has been the subject of much comment in the public press, and I have shared with him the obloquy. We are all exposed to remarks of that kind; and though we feel we have not done wrong, we are often obliged to bear with them, for prudential reasons, in silence. I did not, however, pay a great deal of attention to the comments of the press in the present instance, and after the statement of the noble lord on Friday evening, and the few words I offered in reply, it was my wish that this very delicate matter should be allowed to drop. But the under secretary for foreign affairs did not seem at all satisfied; in fact he appeared to be quite dissatisfied with what his noble chief had said. He felt it to be his duty to raise some fresh matter, and to taunt me, as the organs of the government have done, with being an amateur diplomatist and a special envoy, and he thought it necessary to read me a moral lesson, telling me to take care and not to fall into the same trap again. I think the remarks of the honorable gentleman were wholly uncalled for after the statement which the noble lord at the head of the government had made to the House. The noble lord had said that no one had any right to cavil at the course which my honorable and learned friend and I had taken. He had stated that her Majesty's government were well aware that for the last three years and a half I had been laboring in a very important question—a question of great interest to this country as well as to the people of France, in regard to the maritime relations between the two countries, and that I had been laboring, moreover, not merely

with their knowledge, but with their sanction and on their introduction. I may now state that during the whole time I was engaged in that business, I never said anything to any one on the subject, except to Lord Cowley. The fact never crossed my lips that I had seen either the Emperor or his ministers. I labored for the good of my country in a quiet and unostentatious manner; and if I am an amateur diplomatist, it was her Majesty's government, for which the under secretary is a member, who made me one. It was they who sent me to Paris, and desired me to do the work which they ought to have done themselves. As might be expected, during the interviews with which I was favored, the Emperor was pleased to speak to me on various subjects, but I invariably reported every word to her Majesty's ambassador at Paris, and I invariably told the Emperor that what he might be pleased to say to me would be so communicated to Lord Cowley. The under secretary taunted me on Friday evening by saying that on one occasion I came from Paris saying I was sent home on a special mission by the Emperor, but that he received a telegram contradicting the statement I made. Who was that telegram from? It is the first time I have heard of it. Was it from the Emperor or any of his ministers? If so, it was passing strange. But I am not going to explain the circumstances, they are far too delicate to be handled in this House. They must have been so, or a private individual would not have been made the medium of communication. I have always been anxious to maintain the friendly relations between the governments of the two countries, and would be the last to say or do anything that would cause any misunderstanding between the Emperor of the French and her Majesty's ministers.

Mr. NEWDEGATE. I rise to order. The House must now be aware that the course which has been pursued by the honorable and learned member for Sheffield and the honorable member for Sunderland is not only highly improper, but is likely to be fraught with serious consequences.

Mr. ROEBUCK. Is the honorable member speaking to order?

Mr. SPEAKER. It does not appear to me that what the honorable member has said can be considered as bearing upon the question of order. The question before the House is that an order should be discharged, and nothing has occurred in the debate on that question which, in my opinion, can be regarded as out of order.

Mr. NEWDEGATE again rose.

Mr. SPEAKER. And as what I have now said appears to receive the sanction of the House, it is the duty of the honorable member to acquiesce in it.

Mr. LINDSAY. I hope nothing will fall from my lips which can be deemed unparliamentary, or against order. No one ever heard a whisper from me of any conversation I have had with the Emperor of the French until the 23d of last month, when, incidentally, I obtained liberty to make certain statements. I have refrained from making those statements, and will not make them now. I prefer to bear the reproaches of the under secretary rather than let one word fall from my lips that would tend to disturb, in however slight a degree, the harmony which is generally supposed to exist between her Majesty's government and the Emperor of the French and which really exists between the Emperor of the French and the people of England. I shall not make the fact known, unless her Majesty's ministers drive me to make the statements referred to, and I am inclined to think they will not do so. But as the under secretary has said that he received a telegram from Paris contradicting me, whether from the Emperor or by his orders, or from his ministers I do not know, I may briefly state that the conversation in question took place on the 11th of April, 1862. It was on the subject of American affairs, and was of a very grave character. It related to the past, but had reference also to the future. I listened to what the Emperor said to me with considerable pain. He asked me to report the conversation to Lord Cowley. I said that I was to dine with Lord Cowley the same evening and would probably have an opportunity of doing so. I had not then the opportunity, but on the following morning I repeated to Lord Cowley the whole of the conversation, and I said to him in the most distinct manner, "In sending notes of the conversation to Earl Russell, take care to state in the clearest possible way the reasons why the Emperor has been pleased to have this conversation with me; and the reason why he has thought proper to adopt so unusual a mode of communication; there must be no misunderstanding on that point." I said to him further that the Emperor had asked me to return to him with any remarks which his lordship might be pleased to make upon the conversation, adding, "In this case, anything you say I will report to the Emperor at his desire; therefore say as much or as little as you like." I returned to the Emperor and repeated to him what Lord Cowley had said, and he seemed satisfied with the manner in which I had carried out his wishes. I was then requested, on my return to London, to repeat the conversation to Earl Russell and the noble lord at the head of the government. I felt, when that request was made, that I was asked to perform a very delicate duty, and, anxious to avoid it, I said to his Majesty that Lord Cowley had reported the conversation already to Earl Russell. It is exceedingly unpleasant to me to be obliged to make even these statements; I was, however, not allowed an opportunity of repeating the conversation to Earl Russell, or the noble lord at the head of the government; a

correspondence passed, and I returned to Paris. It was his Majesty's pleasure again to see me. By his request I wrote to the noble viscount on my return to London, and I sent to Paris a copy of the letter which I had written to the noble viscount, and also a copy of his answer, by the noble viscount's desire. The correspondence ended with the following words: "I have performed, to the best of my ability this very delicate duty, and no person shall ever know from me what transpired." And the House does not know even now what transpired. I have not even mentioned the subject to any one until it was incidentally alluded to the other day. I may in conclusion add, that if it be the case, as the honorable member says, that he received a telegram by order of the Emperor such as he described, why did his Majesty, when I returned to Paris, not say, "I can't see Mr. Lindsay again?" If I had been the imprudent person, the busybody, that the honorable gentleman endeavored to make me out, what would have been the Emperor's message for me when I returned the second time to Paris? Why, this, "Tell that gentleman, when he calls, that I am not at home." Therefore, it is strange indeed if the honorable under secretary received the telegram he spoke of. With these remarks—and I have been obliged in self-defense to say more than I desired to say—I now leave this truly delicate matter, and I hope the government will not force me to say any more.

VISCOUNT PALMERSTON. I think my honorable and learned friend has judged rightly in moving to discharge the order. The reasons which I stated the other evening to show that no good could arise from a debate and a division on the resolution of my honorable and learned friend are still, I hope, present to the minds of honorable members. I must, however, express my regret that my honorable and learned friend, and my honorable friend, the member for Sunderland, (Mr. Lindsay,) should have mixed up with this well-considered decision of theirs an attack upon my honorable friend, the under secretary for foreign affairs. ["Oh, oh."] My honorable friend did on Friday what he deemed to be his official duty, as arising from what fell from my honorable friend, the member for Sunderland, after I had spoken, and towards the conclusion of the discussion. I will say nothing on that subject, except only that I hope this will be the last time when any member of this House shall think it his duty to communicate to the British House of Commons that which may have passed between himself and the sovereign of a foreign country. I sincerely say that I do not mean to impute the slightest blame to my two honorable friends. I am persuaded that they acted with the best intentions, and according to what they felt to be their duty as members of Parliament, and for the good of the country. At the same time I wish to impress upon their minds, and the minds of the House, that the proceeding which they have adopted is most irregular—to use no stronger language. The British Parliament is accustomed, as one of its functions, to receive messages and communications from the sovereign of the United Kingdom; but we are in no relation to, we have no intercourse with, no official knowledge of, any sovereign of any foreign country. Therefore it is no part of our functions to receive communications from the sovereign or the government of any foreign state, unless such communications are made by the responsible minister of the Crown, in consequence of official communications held by order of a foreign government with the British government. If the Emperor of the French and the Queen of England have any communications to make to each other, the Emperor has his ambassador in London, and the Queen has her ambassador in Paris. Those ambassadors are the proper organs for such communications. Sovereigns and governments communicate with sovereigns and governments, but they do not communicate with the legislatures of other countries. If either the Emperor of the French or the Queen have any statement which they wish to make public to all the world, or any intentions which they think fit to announce, they have ministers in their respective Parliaments to make those announcements; or, if those Parliaments be not sitting, the Emperor of the French has his official organ, the *Moniteur*, through which to make public any statement of his intentions, any denials, or any assertions. We have not in this country a corresponding official organ; yet everybody knows that the government have the means of making widely known any important statement which they wish to give to the world during the parliamentary recess. Therefore, nothing can be so irregular as proceedings of this sort, and for this obvious reason, setting aside the constitutional objection, which I hold to be very grave, that when the minister for foreign affairs at Paris, or my noble friend at the head of the Foreign Office here, makes a communication to the country, that communication is made by a responsible minister, who is bound to take care that what he states is an accurate description of the communication which it is intended to make, so that no question can at any time arise as to the authenticity of the statement, or the correctness of the report which is made. It cannot be the same with such communications coming through private individuals. I think it right, therefore, to place it upon record, as far as a statement in this House can do so, that the proceeding is utterly irregular, and I trust it will never be drawn into a precedent. I do not in the least find fault with my honorable friends for communicating with the Emperor of the French on any matter on which they think they ought to do so; only they ought to have followed the course which my honorable

friend, the member for Sunderland, said he followed on a former occasion, namely, that of communicating to Lord Cowley that which had been stated to them, and that which it was important should be made known to the government. My honorable friend, the member for Sunderland, said, very truly, he had been in communication with the Emperor of the French for the last three years on subjects connected with commerce and navigation. He rather implied that he was employed by her Majesty's government for that purpose. That is not exactly the case. The honorable member stated that he was going to Paris, and thought, from his commercial knowledge and his acquaintance with navigation, that he might be able to convey to the Emperor information which might be useful to him in framing his measures for the alteration of the French navigation code. He stated that to me and to my noble friend at the head of the Foreign Office. We said: "We should be very glad that you should employ your special knowledge for that purpose." We did not ask him to do it. He offered, and we accepted; and we gave him an introduction to Lord Cowley, in order that he might procure access to the Emperor for that purpose. So far, what he did was perfectly regular, well considered, and founded on the best intentions. Of course, my honorable friend has information which we have not in the same detail; and from his own practical experience he could give useful information to the Emperor with a view to the framing of future legislation on the French maritime code. But then my honorable friend went on to say that, having returned to this country, he offered to communicate to my noble friend and myself the result of his communications with the Emperor; and that he got a letter from me which was written, I think, from the country. As far as I can recollect, for I have not refreshed my memory by looking at that letter, I have no doubt that what I then stated was what I state now, namely, that if the Emperor of the French, in consequence of the representations and information laid before him by my honorable friend, had any proposal to make to the British government, that proposal ought to come through some responsible channel, either through the Emperor's ambassador here, or our ambassador at Paris. It is not the habit of the English government to carry on what may be called a double diplomacy. We have public and official organs of communication with foreign powers; and I think it highly objectionable to have private communications made through individuals touching those matters which ought to be the subject of official communications. That was what I stated, I trust courteously, to my honorable friend: and that was the reason why I thought it better that we should not receive any communication coming from the Emperor through him. I did not intend to offer any discouragement to the useful exertions of my honorable friend in seeking to infuse more liberal commercial principles into the French government. I simply meant to say that it is objectionable for her Majesty's government to be employing private persons, however honorable or intelligent, in carrying on communications with foreign governments, instead of conducting them through the official and legitimate organs. This case is entirely different from that of my honorable friend, the member for Rochdale, (Mr. Cobden,) because he was employed by the government to negotiate in concert with our ambassador at Paris; and although he was too high-minded to receive any actual appointment or salary, he was clearly a diplomatic agent, employed specifically by the government for a special purpose. My honorable friend, the member for Sunderland, did not hold that character. He was a private gentleman, going to Paris to give information which he possessed in an eminent degree, and which would be very useful; but he was not employed by the government; and, therefore, I thought, and my noble friend (Earl Russell) also thought it was not desirable that we should have backward and forward communications between her Majesty's government and the Emperor of the French through my honorable friend. I should hope, sir, that this discussion may end here. I think my honorable and learned friend (Mr. Roebuck) is right in the decision he has taken; and I trust we shall have no further debate as to what was said by the Emperor, or what was said by my honorable friends. My honorable friend, the member for Sunderland, said that if the Emperor had thought him a busybody, the next time he knocked at the door of the Tuilleries his Majesty might say, "Not at home." Well, I think that these discussions in the House are not encouraging to a ready opening of the door of the Tuilleries to those whose presence there and whose opinions and information might really be found very useful.

THE O'DONOGHUE said that the tone which had been taken by the honorable and learned member for Sheffield (Mr. Roebuck) on the present occasion was very different from the tone which he took when he brought the subject before the House. But he wished, before the motion was withdrawn, to enter his humble but emphatic protest against the spirit of hostility to America, in which the honorable and learned member for Sheffield's motion had been conceived, and, also, to free himself from any possible imputation of sharing, in the smallest degree, in the vindictive feelings which had manifestly taken possession of that honorable and learned gentleman's mind. His feelings towards America, both North and South, were very different from those of the honorable and learned gentleman. His feelings were those of unbounded gratitude and the warmest affection; and he ventured to say, in his place in Parliament, on behalf

of the majority of his countrymen, that they entertained similar feelings towards America, both North and South. ["No, no."] There might be a difference of opinion; he had stated his, and, he must say, he did not think they would so far forget what they owed to America as to become consenting parties to a policy which ostensibly had for its object the recognition of the independence of the South, but, in reality, sought, by recognizing the South, to take the surest and safest means of striking a deadly blow at the greatness and prosperity of America. He should say no more on this occasion but that he was sorry the motion of the honorable and learned gentleman had not received an emphatic denial by the House. Though his sympathies leaned more to the North than to the South, it was simply because the object of the North had been the reconstruction of the Union. If, however, by the triumph of the South the Union should be restored, he would equally rejoice, considering that one of the greatest calamities that could befall not only America, but the world, had been averted.

Mr. WHITESIDE said that no country in Europe had more interest in a full discussion of the American question than Ireland, for the simple reason that thousands of her sons had been slaughtered in the contest now going on in America, and for a cause not their own. Owing to some want of energy on the part of her Majesty's administration, it was stated that, at the present moment, the subjects of the Queen were being daily enlisted to engage in that fratricidal war. He did not think that the honorable member could have convinced any one, much less the honorable and learned member for Sheffield, that the people of Ireland did not want the subject discussed. He did not object to the withdrawal of the motion; but he did not think there was any room for a sneer on the occasion, seeing that the Chancellor of the Exchequer stated, many months ago, in October, last year, as plainly as he could speak, that the South had shown all the qualities of a great nation. The government of America complained of that statement as a breach of the laws of neutrality; but it could be no reflection on any member to think that the South was a nation now, when the most eminent member representing her Majesty's government, making capital for the Northern States, proclaimed the greatness of the South in October last, whatever might be the opinion of the government now.

Mr. NEWDEGATE quite agreed with the noble lord at the head of the government in the constitutional answer he had given to the honorable member for Sunderland respecting the mode of communication between sovereign powers; and he felt thankful to the noble lord for warning the House against a repetition of the proceedings which had been adopted. Such proceedings were not only in derogation of the prerogatives of the Crown, but, as any one could easily foresee, might lead to the gravest complications between this and other states.

Motion agreed to.

Order read and discharged

APPENDIX No. XXVIII.

DEBATES IN THE HOUSE OF LORDS AND IN THE HOUSE OF COMMONS OF FEBRUARY 9, 1864, CONCERNING THE PRESENTATION TO PARLIAMENT OF THE PAPERS IN THE CASE OF THE ALEXANDRA.*

[From Hansard's Parliamentary Debates, vol. 173, pp. 310-311.]

HOUSE OF LORDS, *February 9, 1864.*

UNITED STATES—CORRESPONDENCE WITH THE FEDERAL GOVERNMENT—QUESTION.

THE EARL OF DERBY. There is another question which I should like to put to the noble earl, but, as I have given him no notice, I will either take his answer now, or repeat my question on Thursday. The noble earl, by the command of her Majesty, has laid various papers on the table of the House, and, among others, the correspondence with the government of the federal States of America on the subject of the Alabama. I have seen elsewhere that a considerable amount of correspondence has taken place upon an analogous subject, namely, the remonstrances made as to injuries apprehended or sustained by American commerce from vessels sailing from British ports. I wish to know whether the government are prepared to lay upon the table that correspondence as well as the dispatches relating to the Alabama; and, further, whether they are prepared to produce any correspondence containing representations on the part of the government of the apparent violation of the law by American cruisers in enforcing their rights, and also with respect to some very curious decisions which have been given by the prize courts of the United States.

EARL RUSSELL. I can answer that question better on Thursday; but if the noble earl refers to any discussions with the American government about the iron-clads at Birkenhead, I can only say that, as that matter is about to be brought before a court of law, I shall object to produce that correspondence. As the noble earl has raised that question, I may mention that on the first night of the session he referred to a dispatch of the American Secretary of State, Mr. Seward, and expressed a hope that I had answered that dispatch in becoming terms. Now, at the moment, I did not remember having seen any such dispatch. I find since that it was a dispatch written by Mr. Seward to Mr. Adams, but Mr. Adams never thought proper to lay that dispatch before me, and, therefore, I was spared the difficulty and the pain of giving an appropriate answer to it.

THE EARL OF DERBY. I presume that it has now been laid before the noble earl, because I see that a reference is made by Mr. Adams to the noble earl as having received, towards the latter end of August, an answer to several dispatches, among which he includes the dispatch of July 11, to which I referred. He could hardly have received such an answer if the dispatch had not been presented.

EARL RUSSELL. I certainly do not find among the papers the dispatch of July 11, and Mr. Adams informed me expressly that he had received that dispatch and did not hand it to me. That being so, I should not do so useless a thing as endeavor to get up a wrangle with Mr. Adams on a dispatch which was never presented.

THE EARL OF DERBY. My reason for asking the question is, that the whole correspondence appears to have been laid before Congress.

[From Hansard's Parliamentary Debates, vol. 173, p. 323.]

HOUSE OF COMMONS, *February 9, 1864.*

UNITED STATES—THE ALEXANDRA AND ALABAMA—CORRESPONDENCE—QUESTION.

MR. PEACOCKE said he wished to ask the under secretary of state for foreign affairs, whether the government will lay upon the table of the House copies of their correspond-

* Transmitted with dispatch No. 595, from Mr. Adams to Mr. Seward, February 11, 1864, see vol. II, p. 300.

ence with the government of the United States, and more especially that portion of it relating to the case of the *Alexandra*, and the claim by the United States government for compensation for the losses inflicted by the *Alabama* and other confederate cruisers? He also wished the honorable gentleman to state what course the government intended to take with reference to this correspondence.

Mr. LAYARD. Sir, I do not quite understand the drift of the question of the honorable gentleman. The question which he has put on the paper is, whether the papers connected with the *Alexandra* case will be laid on the table of the House? As regards the *Alexandra*, I need scarcely tell the honorable gentleman that the case is still under judicial inquiry, and that consequently we cannot present the papers to Parliament. As regards the *Alabama*, the papers have been laid on the table of the House. Since these papers have been printed, others have been received, and I am not aware that there is any objection to lay them also upon the table of the House. In regard to any other correspondence, if the honorable gentleman will point out to me to what particular correspondence he refers, I shall be able to give him a definite answer.

Mr. PEACOCKE. Sir, I beg to ask the honorable gentleman if he will place upon the table of the House the answer of her Majesty's government to that dispatch of Mr. Seward's relating to the decision in the *Alexandra* case, which has been laid before Congress, and published in the papers.

Mr. LAYARD. Sir, I am advised that it is not right that any papers upon a case under judicial inquiry should be laid upon the table of the House.

APPENDIX No. XXIX.

DEBATE IN THE HOUSE OF COMMONS OF JULY 23, 1863, ON THE SUBJECT OF THE IRON-CLAD VESSELS FITTING OUT AT LIVERPOOL.*

[From Hansard's Parliamentary Debates, vol. 172, pp. 1253-1267, 1269-1272.]

HOUSE OF COMMONS, July 23, 1863.

CONSOLIDATED FUND (APPROPRIATION) BILL.—THIRD READING.

Mr. CORDEN. If it be necessary to show that, according to the technical rule of the House, I am entitled to bring under the consideration of the government the subject to which I am going to advert, I can do so by adducing the fact that sums of money voted for the police and customs departments are contained in the appropriation bill now before the House. Sir, as the remarks which I have to make will imply that those departments have not performed their duty efficiently under the present circumstances, this is not an unsuitable moment for calling their conduct in question. I hold in my hand a memorial from upwards of thirty of the most respectable ship-owners of Liverpool. It is a memorial to the secretary of state for foreign affairs, suggesting an alteration in the foreign enlistment act. The memorialists state that they "view with dismay the probable future consequences of a state of affairs which permits a foreign belligerent to construct in and to send to sea, from British ports, vessels of war, in contravention of the provisions of the existing law;" and they allude to "the attitude of helplessness in which her Majesty's government have declared their inability to detect and punish breaches of the law notoriously committed by certain of her Majesty's subjects." Now, sir, in reading in the Blue Books the correspondence which has taken place respecting the fitting out of ships of war in England to prey upon the commerce of the United States, I have been very much struck with this feature: The Foreign Office seem to me to assume a passive position, and treat the question as one in regard to which they are only to be called into activity when some foreign power has shown to them that the law of nations has been violated. I find Earl Russell repeatedly telling Mr. Adams, the American minister, that it is impossible to act until he supplies the government with conclusive evidence as to the guilt of the suspected parties. This has led, I think, to a complete misapprehension in the public mind as to the nature of our foreign enlistment act. That act was not passed in the interest of foreigners. It was passed for our own safety and protection, and as a proof of that I will just read the preamble of the act. Omitting some technical phrases which intervene, these are its words: "Whereas the fitting out, and equipping, and arming of vessels by his Majesty's subjects may be prejudicial to, and endanger the peace and welfare of this kingdom." Now, I apprehend that when a law is passed for such an object as that, it is the duty of our executive to see that it is not violated or evaded. In fact, I do not know of any object to which the Home Office, with all its affiliation of magistrates and policemen throughout the country, could devote its attention more worthily than the enforcing of the observance of this act of Parliament; for what is going on? At this moment there are three vessels which are specifically known to be engaged in preying upon the commerce of a friendly power. These vessels generally have *aliases*—like other bad characters, they have two or three names. There is the *Oreto*, *alias* the Florida; the Alabama, *alias* the 290; and the Japan, *alias* the Virginia. Now these three vessels, all of which were built in England, armed from England, and chiefly manned by Englishmen, are engaged at this moment in the destruction of the commerce of the United States. I believe that only one of the three has ever entered a confederate port, and that one contrived to enter Mobile and come out again. But two out of the three have never entered a confederate port. They have gone from England and commenced their depredations upon a friendly power without ever having gone home at all. And I am told, it has been stated publicly, that one of these vessels had fifty-two, out of fifty-three, of its crew Englishmen, and most of them sailors from

* See dispatch No. 463, from Mr. Adams to Mr. Seward, July 31, 1863, vol. II, p. 340.

our naval reserve, and, of course, accustomed to the use of artillery. We know what effect these vessels produce upon the commerce of the United States. I will give it in the language of the memorialists, who are men of experience upon maritime affairs. They say:

"That the experience of late events has proved to the conviction of your memorialists that the possession by a belligerent of swift steam cruisers, under no necessity, actual or conventional, to visit the possibly blockaded home ports of that belligerent, but able to obtain all requisite supplies from neutrals, will become a weapon of offense against which no preponderance of naval strength can effectually guard, and the severity of which will be felt in the ratio of the shipping and mercantile wealth of the nation against whose mercantile marine the efforts of those steam cruisers may be directed. That the effect of future war with any power thus enabled to purchase, prepare, and refit vessels of war in neutral ports will inevitably be to transfer to neutral flags that portion of the sea-carrying trade of the world which is now enjoyed by your memorialists and by other British ship-owners."

That is the opinion of upwards of thirty of the most intelligent and influential ship-owners of Liverpool, who have affixed their signatures to the declaration. Recollect that we are under very different circumstances to what we were when privateers or ships of war were employed in former wars, to capture merchant vessels. At that time the motive power of all vessels was the wind; they had no steam; but now, when still the great bulk of our commerce is carried on by sailing vessels, two or three steamers, built especially for speed, may harass, and, in fact, may render valueless, the mercantile marine of a whole nation. I have heard it said: "Oh, if it were our case, we should soon catch those vessels." The self complacency of some people is certainly unlimited. I have made some long voyages in my time. I have four times crossed the Atlantic, and sailed for two thousand miles without seeing a strange sail. The ocean is a very wide place. You cannot follow a vessel when it has once got out to sea with any chance of catching it. You have no stations where you can hear of it, and no road which you can follow with the chance of catching it. But recollect that those vessels have been built expressly for speed and nothing else; and if you choose to go to an American builder and say, "Build me a vessel that will be so fast as to catch anything, or to run away from everything," he will build you a vessel to go twenty knots an hour just as readily as an Englishman. No one knowing the mechanical genius of that people will doubt it. Your ships of war are not only built for speed but for armament and capacity, and merchant vessels are necessarily built to carry freight. Therefore, if you have two or three very swift vessels, they are sufficient to destroy the value of the whole mercantile marine of one of the first naval powers of Europe. This is a question which affects our vital interests, in case we should ever be at war, and the United States at peace. But it may be said, you have not the power by your laws to prevent the construction in British ports of those ships. I must confess that I think, if public opinion fairly supported the government, the law as it now stands would be sufficient. But if the law as it now stands be not sufficient, these memorialists "respectfully urge the expediency of proposing to Parliament to sanction the introduction of such amendments into the foreign enlistment act as may have the effect of giving greater power to the executive to prevent the construction in British ports of ships destined for the use of belligerents." We may be told it is too late to propose any alteration in the law this session, but I would remind the House that the insertion of one word in our foreign enlistment act would be sufficient to make it effective. The great controversy in the law courts is as to whether the word "building" can be said to be implied by the words "fitting out, furnishing, or equipping," you have only to add the word "building" to the words "fitting out, furnishing, equipping, and arming," and every one must admit that you would cover the whole ground, and be enabled to prevent a vessel leaving any of our ports in a partially finished state. But the point to which I wish particularly to draw attention is one of a more serious nature. What has been done cannot be recalled. But there are two vessels now completing in this country; iron vessels, heavily armored for war purposes; and Mr. Adams, the American minister, has declared to the government his belief that those vessels are intended for the confederate government. They are being built in Liverpool by a house that I believe has previously been engaged in building vessels for the confederate government, and I presume that the remonstrance which has been sent to the government by the American minister contains some proof, at least sufficient to furnish a ground of suspicion, that those vessels are intended for the confederate government. Now, sir, I do not think it is very difficult to find out for what government any vessel which is being built in this country is intended, if it be intended for a government which can legitimately come to this country to buy a vessel. I know where a vessel is being built for the Danish government; we knew where the Chinese government were getting their vessels; and we know precisely where a vessel is being built for any other legitimate government. But here are two vessels which, I am told, are being built for the confederate government. Now, I am bound to say, for I think the public are entitled to know what is passing in the minds of public men with regard to future events,

from all I see of the state of public opinion in America through the press, and from what one hears around him, that I believe if these two iron-clad vessels go out and commence a war upon the United States, it will lead to a war with this country. These vessels are calculated probably to match any vessel that we have, or any vessels the Americans have; and if they go out, I am very much afraid it will have the effect of leading to a rupture with this country; and I base my supposition upon the fact that by what we have already done we have rendered the mercantile marine of America practically valueless. What is said here in this memorial of what would happen to us if two or three steamers were let loose on our commerce, has already happened to the American mercantile marine. The rate of insurance has been raised so high in America that they can no longer compete with England and other maritime states; and the effect has been to render the great property, probably £20,000,000 sterling, of the ship-owners of America practically, for all present purposes, valueless. They have been selling their ships extensively in this country. Let us consider the effect which this must have upon the minds of American ship-owners and merchants in New York, Boston, and other places. Let us suppose their case our own; that our shipping had been driven from the ocean by privateers built in New York, if we would understand what must be their feelings towards England, which has rendered their property valueless. The ship-owners and merchants of America comprised that portion of the community which had always constituted the bond of peace between this country and America. The ship-owners of Boston hung their flags half-mast high in 1812, when war was declared with this country; but you have now placed them in such a position with reference to the value of their property that actually they are enlisted on the side of war with England, because if there were a war with this country, then their cruisers would, by preying upon our commerce, raise the rate of insurance on British bottoms to a level with their own, and they would stand on the same footing as ourselves with respect to the world at large. You have removed from the scale of peace, and placed in the scale of war, that part of the community of America which has always been the great safeguard of peace between the two countries. The question is, whether her Majesty's government, during the recess, cannot take those precautions which are necessary in order to prevent these vessels leaving our ports for the service of the confederate government. The public are not aware of the consequences that are now happening from what has already been done. It is not generally known that in respect of every vessel captured by the three privateers I have mentioned, the American government takes a deposition on oath as to the value of that property, and sends in a claim for indemnity to our government. Recollect that every vessel captured by the *Oreto*, the *Alabama*, and the *Virginia*, is debited to the account of England, and that the American minister has made a formal claim upon this country for indemnity for these captures. Our government has constantly refused to acknowledge the claim, but that is the serious part of the whole question. Here is a claim by a foreign government, which must be met in some way or the other. It is out of disputed claims such as these that frequently arise those collisions which take place between one country and another. Is this a state of things that ought to have been brought upon the whole community by acts of individuals—by three or four firms in England doing that which is known to be an evasion of the spirit of the law? Is it, I ask, desirable that the whole interest of this great community should be put in future jeopardy in consequence of these proceedings? I say, on the contrary, it is the interest of every one in this country, of every loyal subject of the realm, to be himself a detective, with a view to prevent such transactions as these, to frown them down when he sees they are going on; and if you cannot find in the public opinion of this country sufficient patriotism and loyalty to do that, the consequences that I have spoken of must fall upon the country. On a former occasion, the honorable gentleman the member for Birkenhead, who spoke exultingly, as I thought, of the part his firm had taken in these transactions, tried to mix up two questions which are totally distinct. The honorable gentleman spoke of the exportation of munitions of war and arms. Now there is, as I have stated before in this House, no law in this country to prevent the exportation of munitions of war, and there never has been—and the American government has never asked us to provide a law for that purpose. It is not difficult to show the difference between munitions of war and ships of war. Munitions of war are a constant article of commerce, and the great element of all armaments; gunpowder is used for civil as well as for military purposes. It is largely consumed for blasting, for mining, and other purposes; and therefore to attempt to put a prohibition upon the export of arms and munitions, to prohibit all trade in arms and munitions, would be an injustice to a very large and regular industry. But what your law does undertake to do is this, to prevent the supplying of ships of war and men to engage in a foreign war with a friendly power, and it is done in your own interest to prevent your being involved in their disputes. The honorable member for Birkenhead made use of another argument: he stated that the American government had applied to him to build ships of war, and that he refused to violate the law. But it would be no excuse for violating the law in one direction to say that he had refused to violate it in

another. If the federal government applied to the honorable gentleman to build ships of war, he did quite right in refusing them; but if by building ships of war for the confederates he violated the law, it was no excuse to say that he had refused in the other case to violate it. But I have a contradiction of his statement which I wish to read to the honorable member.

MR. SPEAKER. This is not an occasion to reply to a speech made some time ago, and certainly not to read observations on anything that took place during a debate in this House.

MR. CORDEN. It is a copy of a letter from the Secretary of the Navy at Washington to my friend Mr. Charles Sumner, which, with the permission of the House, I will read.

MR. SPEAKER. The honorable member may make any statement he thinks proper, but to read a letter commenting on a speech made in this House is entirely out of order.

MR. CORDEN. Then I must confine myself to a statement of the contents of the letter. I have given the honorable member notice that I would call attention to it. It is a letter that contradicts very emphatically the statement of the honorable gentleman. The writer states that under no circumstances, nor at any time, has any order been sent from the American Navy Department to any ship-builder in this country. I do not consider that it has much bearing upon the question before us, but it is interesting as an important matter of fact. With regard to the main question at issue I say it is wholly a matter of public opinion in this country. If it be not felt by the people at large as it is felt by those influential ship-owners in Liverpool, that we have a vital stake in preventing the violation of the neutrality code, those proceedings will go on. But I apprehend we are bound by motives of self-interest, and by the desire to exhibit a feeling of fair reciprocity toward the American people, to put down those illegal proceedings. I alluded before to the course of conduct adopted by the American people in relation to those neutrality laws. I stated in this House that I would challenge any one to show that we ever made any complaint to America with reference to those laws that was not redressed. I challenged any person to prove that there had been on this point any unsatisfactory treatment of this country by America; but why has this been so? Because the public opinion of America has been in favor of maintaining this neutrality code. An appeal was made to the American government in 1855, during the Crimean war, to maintain it. There was supposed to be a vessel of war building in New York, called the *Manry*, and our consul at New York obtained permission from the government of the United States to have the vessel arrested. She was found to be an innocent vessel, and was released at the instance of our own consul. The Chamber of Commerce in New York met, and passed the following resolution: "*Resolved*, That the merchants of New York, as part of the body of merchants of the United States, will uphold the government in the full maintenance of the neutrality laws of this country; and we acknowledge and adopt, and always have regarded, the act of the United States for preserving its neutrality as binding in honor and conscience as well as in law; and that we denounce those who violate them as disturbers of the peace of the world, to be held in universal abhorrence."

I should like to see our Chambers of Commerce putting forward a similar declaration, that the acts for preserving our neutrality "are binding in honor and conscience as well as in law; and that we denounce those who violate them as disturbers of the peace of the world, to be held in universal abhorrence." If such a sentiment be not entertained by the country, the act of Parliament becomes a dead letter, for it will not have the support of public opinion. I said that our foreign enlistment act is a municipal law passed for our own preservation, but there is another view of the question most important to statesmen and diplomats. It is this: that the municipal law is an inherent part of the international code of civilized nations. It is the way in which we fulfill by act of Parliament the duty we owe to foreign countries who adopt the same legislation in regard to us. It is on this ground that the American government have raised the question of indemnity for captures, about which I do not mean now to offer any opinion. If our government refuse to pay, it is because they believe they have a right to refuse to pay, but there is this view of the question to be taken into consideration. The Americans claim the indemnity on international grounds, and not merely because we have violated our own municipal law. They say, "We paid you money for captures made by cruisers that left our ports so long back as 1794, when we had no municipal law at all, on the ground of international law, and we now claim from you the observance of this code on international grounds." It is a very serious element, when diplomatically considered, that we made ourselves parties to the international code by repeatedly applying to the American government to enforce their law, and pass a new law for the protection of our interests. In 1838 we asked them to amend their law to protect us in Canada, and the Americans passed an amended law instantly. During the Crimean war we asked them to exercise a fair neutrality towards us, and they did so. Now we are in the position of neutrals, and they are in the position of belligerents, and can we now proclaim that we are exempt from the obligations of acting towards them as they acted towards us? If we are bound by the obligations of international law, it is no answer to say we cannot compel our subjects to obey our

own municipal law. Standing on the ground of international law, the American government may say, "We hold your nation, as a unit, responsible to us, and it is for you to look to your own subjects, and see that they obey your municipal law." With regard to the future, those gentlemen who, for their own small gains, are building those ships of war for foreign powers are placing us in an embarrassing and very dangerous position. I think there is a fair claim upon the government to exercise its utmost vigilance to prevent those armed vessels from leaving our shores. I perceive a fallacy which runs through Lord Russell's dispatches and the solicitor general's speeches. They constantly confound two very different things, namely, the evidence necessary to detain a vessel, and the evidence necessary to convict a vessel. The consequence is, that we refuse to interfere until Mr. Adams has brought forward conclusive evidence on oath that is sufficient to convict. Why do we maintain the costly machinery of our superior courts, if there be no further proofs left to elucidate? We do not act so in other cases. We do not require all the evidence that is necessary to convict when we arrest a person and bring him before a magistrate. He is brought before the magistrate and committed for trial. When he is brought before the grand jury, it is only on *ex parte* evidence he is tried. I say the government will incur an immense responsibility if they allow those iron-clad vessels to leave these shores as the Alabama left. The departure of that privateer might have been prevented. That vessel, according to Lord Russell's dispatch, left the port of Liverpool without a clearance, clandestinely. She left it on pretense of taking out a pleasure party of ladies and gentlemen, and did not return. It was an unworthy action for any person to be a party to—it was an unpatriotic act; but the government might have prevented that. They had grounds for suspicion, and might have said to the collector of the port, "Before this vessel leaves or has her clearance we must be satisfied on these points;" and to prevent her leaving without a clearance, they might have put custom-house officers on board. I maintain that you have power to do that under your customs consolidation act, and I hope that those other vessels will not be allowed to escape as the Alabama did. The consequences are too serious for the government to remain passive. The machinery of the Home Office ought to be put in operation to trace the guilty, if there be guilt in the matter. I trust the government will not meet us next session without finding that the law as it stands is sufficient to carry out the intentions of the foreign enlistment act, or, if not, that they will come to the House to propose an alteration to the law. The addition of one clause to the customs consolidation act would meet the whole case. By that clause it should be provided that before any vessel of war shall leave any port of England for any foreign country, the builder or owner of such vessel shall be required to state to the collector of customs for that port for what foreign government she is intended. That simple clause added to the customs consolidation act would meet the whole case. You would then know the foreign government for which the vessel was intended, and could ascertain from the minister of that government if they had ordered such a vessel. Recollect that a ship of war differs from articles of merchandise. A ship of war can only be legitimately used by a government. It cannot be legitimately used by an individual. In the hands of an individual it would be a pirate vessel, because an individual has no flag. As the destination of a ship of war so leaving this country must be legitimately the port of some foreign sovereign, it is no hardship to the ship-builder to state to the authorities the foreign government for which she is intended. The interests at stake are too vital on a question of this kind to allow us to be deterred by petty obstacles on the part of individuals. Let them be licensed to build ships of war, and let them declare for what government each ship is built. If the ship be built for an individual, let that individual declare for what foreign government she is intended. Let not the dimensions of the civil war in America be extended by involving ourselves in it. By intervention you may widen the dimensions of that civil war, but all history proves that no benefit to the cause of peace can rise from an interference in the domestic quarrel of a great and spirited nation. I am surprised to hear persons taunting us in this House with being opposed to peace in America because we are against intervention. The same argument was used in 1793 with relation to France, and that argument prevailed. Foreigners interfered to put down the reign of terror in that country. What was the consequence? They extended the reign of terror over the whole continent, and Europe was deluged with blood for twenty years. Interference could now only produce similar consequences in America. I do not pretend to say what the result of the war will be. I have traveled twice over the American continent, and have given very close attention to all that has passed there during the last thirty years. Assuming for myself no superiority, but claiming only the ordinary powers of observation, probably no member of the House has had a better opportunity than I have of judging of the state of affairs at the present moment in America, and of the power of the respective belligerents; and I say I do not expect to live to see, and I never have expected to see, two independent nations within the area of the old United States. I do not ask any one to agree in opinion with me; but I am afraid that a good deal has been said, and that even a little has been done in this country, on a contrary assumption. Whatever may be the issue of this dreadful war, let us keep clear of it. Prevent those British-built

cruisers and ships of war from interfering in a way that will injure the great material interests of America, and my voice will be mute in the quarrel. I desire nothing more than that we should in this House be silent—silent and sorrowful, until this terrible struggle is brought to a close.

Mr. LAIRD said he was prepared, if necessary, to prove that every word he had said in a former debate was perfectly true; and as the question was one which affected her Majesty's government, he was ready to put his proofs in the hands of the noble lord at the head of the government. The honorable gentleman stated that the Alabama went out with a picnic party, but he had ascertained that she went out of dock at night; that she anchored in the river until eleven or twelve o'clock next day, and that she was seen from the shore by thousands of persons. [Mr. CORDEN. I quoted from Earl Russell's dispatches.] He was not responsible for those dispatches [Mr. CORDEN. She had no clearance.] It was not necessary to take a clearance. The owner might either clear her or take a register. The course pursued was to hand the builder's certificate to the owner, and then he might do what he liked with her. A great deal of blame had been cast upon the English government, but what had been the orders given by the American government to the Tuscarora? She was running about the country after the Alabama, but orders were given to her not to touch the Alabama in the channel. Mr. Adams, in a letter to Mr. Seward, dated August 7, 1862, said:

"On the same day I received by mail a note from Captain Craven, dated the 31st, announcing the receipt of my dispatches and his decision to go to Point Lynas at noon on the 1st instant. Captain Craven seems to have sailed up St. George's Channel. This last movement must have been made in forgetfulness of my caution about British jurisdiction, for, even had he found No. 290 in that region, I had in previous conversations with him explained the reason why I should not consider it good policy to attempt her capture near the coast. In point of fact, this proceeding put an end to every chance of his success."

The honorable member stated that the foreign enlistment was infringed because the Alabama had never been in a confederate port, but that was not necessary so long as she carried the confederate commission. If we were at war with America, and the admiral on the North American station captured vessels that were likely to be useful, did the honorable gentleman suppose that he would be obliged to send them into Portsmouth Harbor, and wait for their return? No; the moment a vessel received a commission from a belligerent government she became a recognized vessel of war and must be so regarded by every nation in the world. A proof that the American government admitted the lawfulness of the captures made by the Alabama was, that the American courts had recognized the bonds given by the officers of the ships seized and liberated by the Alabama. They thus recognized the whole proceeding under which she became a confederate vessel and received a confederate commission, and they could not back out of it. The memorial presented by the honorable gentleman was signed by thirty of the ship-owners of Liverpool. They were very respectable persons, but they were too small a number to claim to represent the ship-owners of Liverpool. Many of those who had signed it had, he was told, done so with the understanding that other nations were to do the same. It had been proposed to make the law more stringent, and that any one undertaking an order for building a ship should prove for whom she was intended. But there was this difference between ships and cannon, that ships might be used for peaceful purposes, while cannon and muskets could only be turned to one use. The northern States got all they wanted from this country. They imported largely our arms and ammunition, and at the same time they wished to stop a legitimate branch of industry. As a proof how easily vessels built for purposes of commerce might be converted into vessels of war, he might mention that in 1859 he thought it desirable to strengthen the local defenses of each port by adapting the ferry-boats and tug-boats to purposes of defense. He laid a proposition before the admiralty, and also before Lord Herbert, by whom it was warmly taken up, offering to adapt forty or fifty of these vessels, at an expense of from £250 to £300 each, to the purposes of defense. The admiralty sent down a talented officer of the navy, who made a survey and reported that for £220 or £300 each these vessels might be made to carry, some 32s and others 68-pounders, then the most efficient gun in the service. He (Mr. Laird) would, indeed, take any ship and at a small cost adapt her to carry some of the largest guns of the service. While the honorable gentleman (Mr. Cobden) was turning his attention to the breach of the foreign enlistment act, he could have wished that he had made inquiries into the enlistment of men for the federal army that was now going on in Ireland. If he would advise with the American minister on that point, he might do a great deal of good to the people of Ireland. The honorable gentleman, however, persisted in seeing only one side of the question. The chief baron had given a strong opinion that the law was on the side of those who had built the Alexandra. The honorable member had vouched for the readiness of the Americans to abstain from infringing the law in that respect. He wished, however, to relate to the House what took place in regard to the America, a vessel which was built, manned, armed, and equipped in the United States, and which was taken out by Captain Hud-

son to Petropanlovski for the Russian government. Captain Hudson "expressed his deep chagrin at the unexpected termination of the war, as the America was only one of a fleet that were preparing and equipping for the same government and purpose, and added that in the event of another year's war, they would have swept the Pacific of the English vessels." In confirmation of that statement he would read a memorandum made by an officer on board the Savannah.

"The America came into Rio de Janeiro on her way round from New York to Petropanlovski. When she was in Rio, the captains of the English and French men-of-war lying there wanted to overhaul her, but the Brazilian government would not permit it. They then determined to overhaul her after she left the harbor. Commander Salter, who was commander of the United States squadron at Rio in the frigate Savannah, in order to protect the America, ordered her to take the Savannah in tow, which effectually prevented the English and French searching the America. One of the crew of the America gave the British consul at Rio information of the America having her guns in her hold ready to mount. The America was commanded by Captain Hudson, an ex-lieutenant of the United States navy."

Lastly, an officer of the British navy stated in a letter:

"The America laid in the Pei-ho River for some weeks during the months of April and May, 1858. She had the flag of Count Putiatine flying at the signing of the treaty of Tientsin, May, 1858, and was well known to every naval officer present as having been built in America for the Russians. She had an American eagle on her stern."

So far from the American government keeping faith with that of Great Britain during the war of Russia, they allowed the America to get away, and gave orders to the American admiral to protect her against the search of the English and French officers.

* * * * *

VISCOUNT PALMERSTON: Sir, I have listened with great attention to the speech of my honorable friend the member for Rochdale; but it appears to me that he and her Majesty's government, and I think the country at large, start in the consideration of the matter to which he has directed the attention of the House from different points of departure. We look upon the two parties who are now in arms against each other in America as each of them belligerents, and therefore alike entitled, as far as our neutral position is concerned, to all the privileges and rights which appertain to belligerents. Now, it seems to me that that which is running in the head of the honorable gentleman, and which guides and directs the whole of his reasoning, is the feeling, although perhaps disguised to himself, that the Union is still in legal existence—that there are not in America two belligerent parties, but a legitimate government and a rebellion against that government. Now, that places the two parties in a very different position from that in which it is our duty to consider them. Now, what is the duty of a neutral in regard to two belligerents, and what are the rights of neutrals? The American government have laid down the position for themselves, because they have declared that a neutral is at liberty to furnish a belligerent with anything that the belligerent may choose to buy, whether it be ships, arms, ammunition, or anything else. No restriction is imposed on a neutral in furnishing a belligerent even with those things which are material ingredients in the conduct of military operations. Therefore, on no international law has the federal government any right whatever to complain of this or any other country that may supply a party in arms against the federals with anything they may choose to buy. I cannot, in the abstract, concur with my honorable friend in thinking that there is any distinction in principle between muskets, gunpowder, bullets, and cannon on the one side, and ships on the other. Those are things by which war is carried on, and you are equally assisting belligerents by supplying them with muskets, cannon, and ammunition, as you are by furnishing them with ships that are to operate in the war. What has been the practice of the United States government themselves? The honorable member for Birkenhead (Mr. Laird) has alluded to the case of a ship built in the United States when we were at war with Russia. We complained, and the ship was examined and declared by the local authorities to be free from any ground for molestation. Nevertheless, there was the best reason for believing that the ship was destined for the Russian government and for naval operations in the eastern seas, where the Russian government most wanted such assistance. We had reason to believe that other ships were then building in America for the same purpose, and would have been used if the war had continued. Therefore I hold, that on the mere ground of international law, belligerents have no right to complain, if merchants—I do not say the government, for that would be interference—as a mercantile transaction, supply one of the belligerents, not only with arms and cannon, but also with ships destined for warlike purposes. But then in our case there comes in, no doubt, the municipal law. The American government have a distinct right to expect that a neutral will enforce its municipal law if it be in their favor. Then comes the question whether the government have done that which the government is enabled to do, and ought to do; and I contend that we have. My honorable friend says that we ought to have prevented ships from being built which were evidently destined for war. But it was very well

said by the honorable member for Birkenhead that you cannot draw a distinction between ships that may evidently be built for warlike purposes and those that may be eventually applied to warlike purposes. He has mentioned—what everybody knows—that when we had to consider our means of naval defense, we found a great number of mercantile steamers in our ports, which might, in a short time, and at a small expense, be converted into ships of war, and made available for the defense of the country. Take what has happened. One of the ships employed in the service of the confederates to prey on the commerce of the federals was the *Nashville*. Now, what was the *Nashville*? Suppose she had been built in this country, what possibility had we under the foreign enlistment act of preventing her from leaving this country? I went on board the *Nashville* in Southampton docks. She was a steamer very much like those that go up and down the Thames, with a glass room built on deck, and furnished below with berths for passengers. But they put guns on board, and being able to steam with great rapidity, the *Nashville* could easily capture and destroy any merchantman. In the same way a ship might be built in this country capable of being converted into a ship of war; but with respect to which, while building, it would be perfectly impossible to prove by any legal construction that she was intended for a ship of war, and therefore liable to be interfered with. My honorable friend complained that the government have not exercised the vigilance incumbent on them in such a matter, and that they have relied entirely on receiving information from the minister of the United States. But that is not the fact. The Home Office have employed all the means that could, with propriety, be used, and in some cases complaints have been made that they have employed more stringent means than they ought to do. We are not in the habit in this country of employing that system of spies which is resorted to in other countries; still the government have thought it their duty to employ persons openly and legitimately to obtain information. With regard to the *Alabama*, an explanation has been given by the honorable member for Birkenhead. With regard to the *Alexandra*, the attention of the government having been called to the construction of the vessel steps were taken to stop and seize her. The trial came off; and the judgment of the court was against the government, the court deciding that under the foreign enlistment act the government had no right to stop her. Exceptions have been put in to that ruling, but the question cannot be decided until next November. I really think there is no ground on which either honorable gentlemen or the federal government can found any complaint that her Majesty's government have not done all that the municipal law entitles them to do in regard to the fitting out of ships in this country. There is a further difficulty. I will suppose a ship built of such a character that we might safely say it was built for warlike purposes. Then you must prove whom she is intended for. The honorable gentleman assumes that parties may be in combination to evade the law; but in that case nothing can be easier than to show that a ship is not intended for the particular state for which she is supposed to be built. The honorable gentleman suggests that we ought to amend the foreign enlistment act, and add the word "building," as well as "armed and equipped." But that goes beyond the question of ships of war. You put an end to a branch of trade—the building of ships of commerce for foreign states. You would thus go beyond what even the honorable gentleman contemplates. I say nothing about the question of altering your law to suit the convenience of any foreign government at any particular moment. We undertook a change in the law some years ago, not in deference to any demand from a foreign government, but because we thought, as gentlemen and men of honor, the government and Parliament of this country were bound to do what we proposed to protect an allied sovereign from the personal danger to which he was exposed from conspirators in this country. We did it spontaneously, but not successfully. But no such principle applies to this case; for to pursue the course the honorable gentleman recommends would be fettering our own legitimate industry and commerce, and I do not think the House would agree to such a change. I quite agree that we ought to endeavour to enforce our law as far as we can, and that whenever we learn that there are ships being built presumably for a belligerent, between which and other belligerents we profess to be neutral, we ought to enforce our law as far as the courts of justice enable us. That will be the course pursued by the government. As regards one of the iron-clads to which my honorable friend has referred, I am informed that the French consul claims it. [Mr. Cobden dissented.] How that is, I cannot say.

APPENDIX No. XXX.

DEBATE IN THE HOUSE OF COMMONS OF MARCH 6, 1868, RELATIVE TO THE ALABAMA CLAIMS.*

[From Hansard's Parliamentary Debates, vol. 190, pp. 1150-1198.]

HOUSE OF COMMONS, *March 6, 1868.*

THE ALABAMA CLAIMS—MOTION FOR AN ADDRESS.

Mr. SHAW-LÉFEVRE, in rising to call attention to the failure of the negotiations with the United States government for arbitration of the Alabama claims, and in moving for papers, said that in bringing forward this important subject he trusted it would not be supposed that he desired to take a course which would embarrass the future negotiations of the noble lord, the foreign secretary, with the government of the United States, or which would add to the complications already existing between the United States and this country. Nothing could be further from his wish; if he thought so he should be silent. But, on the contrary, it seemed to him, and those with whom he had communicated, that some good might arise from the discussion of the subject if it were conducted with candor and a due sense of responsibility. He would not ask the House to follow him through a long statement; but there were certain facts and dates with which he must trouble them. The earliest cause of complaint on the part of the United States government arose out of her Majesty's proclamation of neutrality, which was issued May 13, 1861, on the advice of the law officers of the Crown. It was not usual with us to publish the opinions of the law officers, and therefore we could not with certainty know what were the grounds for their decision; but looking at the facts which were then known, it was not difficult to conceive them. The fall of Fort Sumter had taken place on the 14th of April, 1861, and was generally considered the commencement of the civil war in America. Long before that, however, seven of the Confederate States had organized a distinct government, had made great preparations for war, and had virtually separated from the Northern States. The fall of Fort Sumter was followed two days afterwards by the proclamation of President Lincoln calling out seventy-five thousand men. That was followed by a proclamation from the Confederate States calling out thirty thousand men, and inviting privateers to apply for letters of marque. Next day President Lincoln proclaimed his intention to blockade the southern coasts, and to treat the crews of the privateers as pirates. These facts reached this country on the 3d of May, and on the 4th they were published in the Times. It was not, however, till the 10th that an official copy of the proclamation reached the Foreign Office. On the 6th of May her Majesty's government announced in that House that they should recognize the South as belligerents; and on the 13th of May, as he had stated, the proclamation of neutrality was issued by the government. The actual blockade was enforced by the North along a great portion of the coast of America by the end of April, and from that day forward there were in the prize courts of the North numerous cases of English vessels captured during the blockade, and of vessels of the Southern States captured on the high seas. It was not, however, until some little time afterwards that the southern flag made its appearance on the high seas. It was the custom of the American government to talk as if all the vessels which carried the confederate flag had their origin in this country; but there were four cases of confederate men-of-war or privateers which sailed from southern ports before any one was built in this country. The first was a vessel called the Sumter, which escaped the blockade from New Orleans, and which, after capturing two prizes off Cuba, put into Trinidad on the 29th of July, 1861, nine days after the battle of Bull's Run. She was received there as a fully commissioned vessel of war, and was provided with coal and provisions. That was the first instance in which the confederate flag had been recognized by the government of this country. Another vessel, the Nashville, also duly commissioned in a southern port, shortly afterwards sailed on a cruise of destruction, and put into English ports at various times. It was not till the following year that

* Transmitted with dispatch No. 1549, from Mr. Adams to Mr. Seward, March 7, 1868; see vol. III, p. 691.

any complaint was made of a vessel being built and equipped in our ports. In the course of the winter of 1861-62 the confederate government sent over here a staff of naval officers, with instructions to buy or build vessels of war, their main object being to embroil us with the North. They also raised a considerable loan, out of the proceeds of which these vessels were to be paid for. In due course the *Oreto*, or *Florida*, was completed by Messrs. Miller & Co., of Liverpool. The American minister having made a complaint in respect to this vessel, inquiries were made, and the then collector of customs of Liverpool, a gentleman who seemed on all occasions to have been easily misled, asserted his belief that she was intended for the Italian government. She declared for Palermo, but she sailed direct for Nassau, there underwent some judicial investigations, then obtained a portion of her armament, and ran the blockade into Mobile, whence, in due time, she sailed as a vessel of war, burning and destroying every federal vessel she fell in with. Shortly after the news of the escape of this vessel came to the knowledge of the American government, they complained that another vessel was being built by the Messrs. Laird, and which was called the *290*. Her Majesty's government again referred to the collector of customs at Liverpool, who reported that this vessel was obviously a war vessel, that her builders did not deny it, and admitted that she was intended for a foreign government, but that they would not say for whom. On the 21st of July, 1862, affidavits were obtained by the American consul throwing light upon her intentions. Among these was one from Passmore, who stated that he had been told by Captain Bullock, who engaged him, that the vessel was intended to fight the North. These affidavits the next day, the 22d, were also sent to the Foreign Office by Mr. Adams, and on the 23d the solicitor to the American government, Mr. Squarey, on calling at the Foreign Office, was informed by Mr. Layard that the papers had been sent on the 22d to the law officers. The honorable and learned member for Richmond, (Sir Roundell Palmer,) then attorney general, had, on a previous occasion, told them that they reached him only on the 26th. During that interval they appeared to have been left with the Queen's advocate, who, according to the routine of the office, would have given his opinion, and sent them on to the attorney general. Unfortunately, at that very moment the then Queen's advocate was suffering from a severe malady, from which, it was to be feared, he never recovered, and the result was that long delay. That fact had not hitherto been stated in that House, chiefly through the kind reserve of the honorable and learned member for Richmond; but, as in a conversation between Lord Russell and Mr. Adams, reported in the American official correspondence, the delay was attributed to that cause, and, as it was well known in the States, there was no longer any reason for that reserve. On the 28th the papers reached the attorney general, who at once gave his opinion, and orders were sent to stop the vessel on the next day. Unfortunately, before the order arrived or was executed the builders got wind of it, and the Alabama got away by a stratagem, under pretence of a trial trip, without a clearance, and with a party of ladies and music on board, not without strong suspicion of treachery, the source of which, he believed, was well known in Liverpool. She went to Port Lynas, near Beaumaris, where she received part of her crew, and then sailed to the Azores, where she was met by another vessel, from which she obtained the rest of her men and armament. When it was discovered that she had escaped, orders were sent to Queenstown and Nassau to detain her; but she avoided those ports, and when she put into a British port in Jamaica, she was received as a properly commissioned vessel of war. From that time to the end of her career she never put into a southern port, but she frequently received hospitality, sometimes of a demonstrative character, in British ports. She burned all her prizes, which she constantly decoyed by flying British colors; her crew was for the most part English; some of her officers were English; and she was paid for by money raised in England on the chance of the success of the South; her function was not to fight, but to burn and destroy and run away; she was a kind of firebrand, lighting the seas with bonfires of innocent merchant vessels. The damage she did was enormous; the like of such an enterprise had never before been known, and was scarcely possible until steam had given such a great advantage to steam vessels over merchantmen, which were for the most part sailing vessels. The name of that vessel, her cruise, her bonfires, her English origin and connection, the cheers of that House, he regretted to say, when an honorable member boasted of his connection with her, and said he would rather be the builder of it than make the speeches which the honorable member for Birmingham had made—all these had entered deep into the hearts of the American people, and had done untold mischief in raising ill-feeling between them and us. He supposed there were few now who would not look upon all those who were connected with that vessel as among the greatest malefactors of the age. Unfortunately, they were never brought before a criminal tribunal; and it was, perhaps, on account of their immunity that other similar attempts were made, some successful, others not so. He need not recall to the memory of the House the case of the iron-clad rams, also built by Messrs. Laird. The government by that time had learned that if they followed the strict line they had pursued in the case of the Alabama, namely, of insisting upon strict evidence to connect the vessel with the South, and disregarding

the surrounding circumstances of violent suspicion, the vessel would get away. In the case of the rams the government overstepped the line of the law, and detained them on their own responsibility pending further inquiries. It would be recollected that Lord Cairns made a fierce attack upon the government for having taken that step, and only failed by six in defeating them. Was there a member of that House, he wondered, who did not wish that the same course had been pursued in the case of the *Alabama*? Another vessel, called the *Pampero*, was also seized at Glasgow, and was condemned in the courts there. At the close of the war she was restored to her owner, who responded to that act of kindness by immediately rushing into another similar enterprise; and under the name of the *Tornado* that vessel had done her best to complicate our relations with Spain. There was also a vessel called the *Alexandra*, which was detained. She underwent a judicial investigation, which, unfortunately, did not succeed; but he believed she had again, on a subsequent occasion, been arrested, and legal proceedings were still in progress when the war came to an end. Two other vessels, however, escaped without, as far as he could learn, any information or complaint having been made by the American minister; they were the *Georgia* and the *Sea King*, afterwards the *Shenandoah*. Both these vessels sailed by stealth from our ports, met other vessels bringing guns and men to them somewhere beyond our jurisdiction, and then started on the same errand as the *Alabama*. In the case of the last vessel he should mention that a letter from the American minister at Lisbon to his own government showed that there was much to be said on the other side of the question as to the negligence of the American authorities. Writing from Lisbon in November, 1864, he complained that he was not kept informed of the whereabouts of the American cruisers, and said that if he had been he might have been able to stop the vessel. He said:

"It was well known in Liverpool that a steamer called the *Sea King* was to be converted into a hostile cruiser, and that another steamer called the *Laurel* was to proceed to an appointed rendezvous with the armament, to be transferred at a fitting opportunity. That information was in my possession long before either vessel left England, but every effort on my part to communicate with one of our vessels of war failed, mainly from the want of knowledge of their whereabouts, and the criminal enterprise succeeded, with abundant means at our disposal to prevent it."

This letter made it the more extraordinary that no information was given to our government before the vessel sailed. The vessels he had named constituted for a long interval the cruising force, he believed, of the confederate navy, except, perhaps, two or three coasting privateers or some floating batteries, which never left their ports. The damage done by them was very great; they captured or burnt upwards of two hundred merchant vessels, with cargoes valued at about £3,000,000. A considerable portion of that loss, however, fell upon English insurance companies, another portion fell upon this country owing to the enhancement of the price of oil and other commodities destroyed. But the damage to the Americans was not measured only by the loss of these vessels; their commerce fled their flag, freights rose so high in consequence of the increased rate of insurance that their vessels could not get them. Large numbers of their vessels were sold either really or collusively to us to be registered under our flag; what they lost we gained. In two years the foreign commerce of America carried under their flag fell to about one-third of what it was before, while that under our flag doubled. This, perhaps, not unnaturally, raised a suspicion in the minds of people in the North that the ship-builders and ship-owners of Liverpool were not even disinterested in the aid which they gave to the slave-owning South. Those only who had traveled in America since the war could, he believed, appreciate the harm which had been done by the cases which he had mentioned, or the extent to which ill-feeling had been roused in that country. This ought to be a reason for treating the question of the *Alabama* claims somewhat generously. He did not wish to exaggerate, nor was he prepared to assert that war would arise out of the matter; but it would afford the means of complication to agitators should disputes arise between the two countries on any other subject. He believed it was now the opinion of all classes in both countries that the *Alabama* question should be settled; and the only question was, what should be the terms of the proposed arbitration? He would next refer to the manner in which diplomacy had already dealt with the question. The first matter was the recognition of the belligerency of the South. Mr. Adams arrived in this country—which they must all regret he would shortly quit—on the very day the proclamation of neutrality was issued. His first task appears to have been to communicate with Lord Russell, and he expressed regret that the British government had decided to issue that proclamation, which at once raised the insurgent States into belligerents. Lord Russell replied that the proclamation was due to the advice of the law officers of the Crown, and that, in recognizing the insurgent States as belligerents, no opinion was expressed on the merits of the war. Mr. Adams, while stating his readiness to assent to that view under other circumstances, intimated that the act appeared to be a little more rapid than the occasion actually called for. At a subsequent interview with Lord Russell Mr. Adams protested against the course pursued; but in the diplomatic communications between the two

countries no official dispatch was to be found protesting against the recognition of belligerency, or demanding its recall, or demanding satisfaction for it, until a very recent period. Such was not the case in regard to the confederate cruisers. No sooner was it known that the Alabama was capturing and burning federal vessels than Mr. Adams made a formal claim against our government for payment of the losses caused by this vessel, on the ground of its remissness and negligence in permitting the vessel to escape. In October, 1863, further information having been received of the number of vessels burnt by the cruisers, the correspondence on that point was resumed, and, in the course of that correspondence, Mr. Adams for the first time offered arbitration to the British government, but nothing was said about the recognition of belligerent rights, the complaint being confined solely to the remissness of the government in not maintaining the neutrality they professed, and in not putting the foreign enlistment act into force, and thereby preventing those vessels leaving British ports. On that occasion he did not find that Lord Russell took notice of this offer to arbitration. The noble lord simply met the claim of Mr. Adams and denied its justice. From that time the claims lay dormant for nearly two years, and when they were renewed in the case of the last vessel, the question of belligerency was then for the first time brought forward. In the course of the correspondence Lord Russell adverted to the claims made by Portugal against the United States in 1824, and pointed out how similar they were to those now made by the federal government on England; he also showed that the United States had taken the same line of defense then as England did now. His reasons for declining arbitration were that the British government could not, with due regard to its dignity, agree to refer the question, whether it had not acted with due diligence and good faith; or whether the law officers of the Crown had rightly interpreted the foreign enlistment act. The British government, his lordship added, was the guardian of its own honor, and must take its own law officers as the interpreters of the law. With this dispatch the correspondence closed for some time. But at the close of 1865, President Johnson, in his message to Congress, adverted to these claims and to the refusal of arbitration in terms at once so dignified and conciliatory that he must refer to them. He said:

"The formal accordance of belligerent rights to the insurgent States was unprecedented, and has not been justified by the issue. But in the systems of neutrality pursued by the powers which made that concession there was a marked difference. The materials of war for the insurgent States were furnished, in a great measure, from the workshops of Great Britain; and British ships, manned by British subjects, and prepared for receiving British armaments, sailed from the ports of Great Britain to make war on American commerce, under the shelter of a commission from the insurgent States. These ships, having once escaped from British ports, ever afterwards entered them in every part of the world to refit, and so to renew their depredations. The consequences of this conduct were most disastrous to the States then in rebellion, increasing their desolation and misery by the prolongation of our civil contest. It had, moreover, the effect, to a great extent, to drive the American flag from the sea, and to transfer much of our shipping and our commerce to the very power whose subjects had created the necessity for such a change. These events took place before I was called to the administration of the government. The sincere desire for peace by which I am animated led me to approve the proposal, already made, to submit the question which had thus arisen between the countries to arbitration. These questions are of such moment that they must have commanded the attention of the great powers, and are so interwoven with the peace and interests of every one of them as to have insured an impartial decision. I regret to inform you that Great Britain declined the arbitration."

"The United States did not present the subject as an impeachment of the good faith of a power which was professing the most friendly dispositions, but as involving questions of public law, of which the settlement is essential to the peace of nations; and though pecuniary reparation to their injured citizens would have followed incidentally, on a decision against Great Britain, such compensation was not their primary object. They had a higher motive, and it was in the interests of peace and justice to establish important principles of international law. The correspondence will be placed before you. The ground on which the British minister rests his justification is, substantially, that the municipal law of a nation, and the domestic interpretations of that law, are the measure of its duty as a neutral, and I feel bound to declare my opinion, before you and before the world, that that justification cannot be sustained before the tribunal of nations. At the same time I do not advise to any present attempt at redress by acts of legislation. For the future, friendship between the two countries must rest on the basis of mutual justice."

The papers he had referred to were laid before Parliament in the winter of 1865. When Parliament met in 1866, Lord Derby stated in "another place" that he fully approved of the correspondence of Lord Russell, and of the arguments by which he had supported the cause of England. In that House no objection was made to the course taken by the then late government; only one or two members having ventured

to express, incidentally, their regret that arbitration had not been accepted. He, himself, having a strong opinion on that point, had framed a motion early in the session of 1866, after consulting with a few who thought as he did, with a view to raising a discussion upon the subject of arbitration; and having done so, he went about to see how it would be met by other members of the House. He found that, if the discussion came on, it would elicit so strong an expression of disapproval of arbitration, especially from those who sat opposite to him—the conservative party—that, after consultation with his friends, and especially with the honorable member for Bradford, (Mr. W. E. Forster,) he thought it better not to progress with it, feeling confident that the subject must come on again at some future time; and believing that it was unwise to commit the House too strongly against a course which he was satisfied would have to be taken. If anything at that time seemed more improbable than even household suffrage coming from a conservative government, it was that they should offer arbitration for the settlement of the Alabama claims. Their whole attitude and their speeches during the war appeared to render it impossible; but it seemed that office brought with it a great change, and a sense of responsibility which was wanting before; perhaps, also, the two changes with respect to reform and to the mode of looking at American questions were not so unconnected with one another as might first appear. The hostility of certain parties in this country to the federal cause, was due mainly to a dread of its institutions—to an instinct that in the success of the North was involved the success of popular government. It was the homage paid to the force of American institutions. On the success of the North there followed an immediate necessity for an advance toward democracy here, and it was only right that it should be accompanied by a very different tone toward America. He had no desire to taunt honorable members with either one change or the other—he rejoiced in both. They were both equally beneficial to the country as to honorable members opposite. But it was right that in estimating our present position we should bear this change in mind. The first symptom of this change was to be found recorded in Mr. Adams's account of his first interview with the new foreign minister. Mr. Adams, writing to Mr. Seward, July 12, 1866, speaking of his first interview with Lord Stanley, said:

"His lordship in welcoming me remarked that he presumed his sentiments toward the United States had been long well known to me. He had always favored the cultivation of friendly relations with us, and it had been a cause of regret that they should have been at all endangered during the late struggle by ill-considered speeches made in Parliament."

The apology thus given was certainly needed on behalf of some of the noble lord's colleagues; and he (Mr. Shaw-Lefevre) could only wish, looking back at the four years of war, that the noble lord had even occasionally used his great influence by speaking out his own views to remedy the harm caused by such mischievous speeches. The American claims, which had been dormant for more than a year, were again renewed in August, 1866. This time the question of recognition, instead of being treated as a collateral and apparently unimportant matter, now became the main subject of complaint. Mr. Seward's letter, on reopening the discussion, was mainly occupied with it, and he treated the question of the maintenance of our neutrality as one of really subordinate nature. He said, August 27, 1866:

"While as yet the civil war was undeveloped, and the insurgents were without any organized military force or a treasury, and long before they pretended to have a flag, or to put either an armed ship or even a merchant vessel upon the sea, her Majesty's government, acting precipitately, as we have always complained, proclaimed the insurgents a belligerent power, and conceded to them the advantages and privileges of that character, and thus raised them in regard to the prosecution of an unlawful armed insurrection to an equality with the United States. This government has not denied that it was within the sovereign authority of Great Britain to assume this attitude; but, on the other hand, it insisted in the beginning, and has continually insisted, that the assumption of that attitude, unnecessarily and prematurely, would be an injurious proceeding for which Great Britain would immediately come under a full responsibility to justify it, or to render redress and indemnity."

"Without descending on this occasion so far as to insist, as we always have insisted, that there was a deficiency of energy in the respect adverted to, you may remind Lord Stanley that, in the view which we have taken of the subject, the misconduct of the aggressors was a direct and legitimate fruit of the premature and injurious proclamation of belligerency, against which we had protested, and that the failure of her Majesty's government to prevent or counteract the aggressions of British subjects was equally traceable to the same unfortunate cause."

The noble lord, in a dispatch to Sir Frederick Bruce, three months afterward, answered Mr. Seward. He met his argument strongly, and denied that recognition had been premature, and repudiated all liability for it. At the same time he offered arbitration upon the other questions which had hitherto been in dispute. Lord Stanley, writing to Sir Frederick Bruce, says:

"On the other hand, they are fully alive to the inconvenience which arises from the

existence of unsettled claims of this character between two powerful and friendly governments. They would be glad to settle this question if they can do so consistently with justice and national respect; and with this view they will not be disinclined to adopt the principle of arbitration, provided a fitting arbitrator can be found, and that an agreement can be come to as to the points to which arbitration shall apply.

"With regard to the ground of complaint on which most stress is laid in Mr. Seward's dispatch, viz: the alleged premature recognition of the Confederate States as a belligerent power, it is clear that no reference to arbitration is possible. The act complained of, while it bears very remotely on the claims now in question, is one as to which every State must be held to be the sole judge of its duty; and there is, so far as I am aware, no precedent for any government consenting to submit to the judgment of a foreign power or of an international commission the question whether its policy has or has not been suitable to the circumstances in which it was placed."

Mr. Seward accepted the proposal. Writing to Mr. Adams on the 12th of January, 1867, he said:

"If, however, her Majesty's government, for reasons satisfactory to them, should prefer the remedy of arbitration, the United States would not object. The United States, in that case, would expect to refer the whole controversy, just as it is found in the correspondence which has taken place between the two governments, with such further evidence and arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side."

Lord Stanley, writing to Sir Frederick Bruce, on the 9th of March, 1867, said:

"To such an extensive and unlimited reference her Majesty's government cannot consent, for this reason among others, that it would admit of, and indeed compel, the submission to the arbiter of the very question which I have already said they cannot agree to submit."

"The real matter at issue between the two governments, when kept apart from collateral considerations, is whether in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British government, and by those who acted under its authority, was such as would involve a moral responsibility on the part of the British government to make good, either in whole or in part, the losses of American citizens."

The answer made by Mr. Seward to this dispatch was unfortunately not given in full in the papers before the House, but it was printed at length in America. There was only a reference to it in the letter written by the noble lord to Sir Frederick Bruce. It was dated the 12th of August, 1867. The answer was this:

"The President considers these terms to be at once comprehensive and sufficiently precise to include all the claims of American citizens for depredations upon their commerce during the late rebellion which have been the subject of complaint upon the part of this government. But the United States government, in this view, would deem itself at liberty to insist before the arbiter that the actual proceedings and relations of the British government, its officers, agents, and subjects, toward the United States in regard to the rebellion and the rebels as they occurred during that rebellion, are among the matters which are connected with the vessels whose depredations are complained of."

"The President will be gratified if this explanation shall conduce to remove any of the difficulties which have heretofore prevented the two governments from coming to the amicable and friendly understanding and arrangement which is so sincerely desired by both."

The noble lord replied to that dispatch on the 16th of November. He said, writing to Mr. Ford:

"The language thus used by Mr. Seward appears to her Majesty's government to be open to the construction that it is the desire of the United States government that any tribunal to be agreed upon might enter into the question whether the act or policy of her Majesty's government, in recognizing the Confederate States as a belligerent power, was or was not suitable to the circumstances of the time when the recognition was made, a construction which, after the distinct and repeated avowal of her Majesty's government that they could not consent to a reference of such a question, her Majesty's government can hardly suppose that it was intended by Mr. Seward that the passage in his dispatch should bear."

"But to prevent any misapprehension on this subject, her Majesty's government think it necessary distinctly to say, both as regards the so-called Alabama claims brought forward by the citizens of the United States, and as regards the general claims, that they cannot depart, either directly or indirectly, from their refusal to 'refer to a foreign power to determine whether the policy of recognizing the Confederate States as a belligerent power was or was not suitable to the circumstances of the time when the recognition was made.'"

Mr. Seward declined the reference, subject to this restriction. No one who looked

carefully at the last few letters could fail to perceive that Mr. Seward had made a considerable change in his position. At the commencement of that correspondence Mr. Seward's main ground of complaint was our having recognized the confederates as belligerents, whereas, at its close, he assented to the terms proposed by the noble lord. It appeared to him that there were three stages in this correspondence. In the first stage Mr. Seward put the whole question upon the recognition of belligerency, all other questions being treated as incidental and unimportant; in the second he offered to refer the whole correspondence, as it then stood, to arbitration; and in the third he accepted the proposition put by the noble lord, namely, whether we were morally responsible for the damages occasioned by the Alabama, and stated that that proposition was sufficiently precise and comprehensive for his purpose. The difference between the first and last of these stages was very great, and he (Mr. Shaw-Lefevre) could not but regret that the noble lord had not left the matter there, but had thought it to be his duty to make special exception of the recognition question, which induced Mr. Seward to withdraw from the negotiation altogether. It was one thing to refer the question itself to an arbitrator, and another specially to except from the arbitration another subject, which might well be introduced as an incidental topic bearing upon the main question at issue. If the special exception were not made it would be open to the other side to introduce the subject as an argument; but, at the same time, it would be equally open to us to object to its introduction as being irrelevant. In view of the nature of the whole question between the two countries, he could not but regard it as a mistake on the part of the noble lord to require the total withdrawal of Mr. Seward and the American people from what he (Mr. Shaw-Lefevre) considered a bad and false position. The noble lord might have been satisfied with the concession that had been already made in the course of the correspondence, and it was a mistake to break in upon Mr. Seward with a special exception which he must have known would lead to the failure of the whole negotiation. Looking at the whole tone of the correspondence, it was impossible not to think that it was the intention of the noble lord to bring the question to a point at which it was possible that arbitration could be agreed on both sides, consistently with the claims of one and the dignity of the other, and that, at the last moment, becoming frightened at the position at which he had arrived, he made the special exception in question. The noble lord had stated the question for arbitration to be, whether we were morally responsible for the damages caused by the Alabama. But what was the meaning of the word "morally?" It certainly required some explanation. Was the arbitrator to be at liberty to go beyond the ordinary strict rules and usages of international law, and to extend the inquiry into the more vague regions of moral responsibility? If so, on what ground were we specially to except from arbitration a branch of the subject which the American people thought bore strongly upon the morality of the question? If the morality of the whole question was to come under consideration, he was not sure that it might not be for our advantage that the inquiry should be extended rather than limited; for he believed that the wider the view taken of the matter the more would the morality of our position become apparent; while, if it was confined to the question of these vessels only, there was much to be said against the morality of our position. He did not, however, wish to express any opinion upon the main question in dispute. He had ventured, during the last few years, to differ from the opinions expressed by some learned authorities as to what our international obligations were, but he did not desire, at the present moment, to enter into that question. Two classes of objections had been raised to arbitration upon this question. It was objected, in the first place, that the question of recognition of belligerency was, in fact, so certain that it was not only not right to allow it to form the subject of arbitration, but that it ought to be especially excepted from arbitration; and, secondly, that the dignity of this country would not permit that question to be raised before an arbitrator. For his own part, he was so perfectly satisfied of the strength of our position on this question that he could not conceive an arbitrator deciding against us, or even holding that it was relevant to the more important question. He believed that war did actually exist at the time of our proclamation of neutrality, and if we required proof of the soundness of our position it was to be found in Mr. Seward's dispatches, and in the decisions of the American law courts in the numerous cases of vessels captured while breaking the blockade, or seized upon the high seas as being the property of citizens of the Confederate States, in which cases the Supreme Court held that the proclamation of blockade was a proclamation of war, and that, in fact, the northern States were themselves exercising belligerent rights. But, however certain we might be upon the point, there were people on the other side of the Atlantic who were equally certain that we were wrong in issuing the proclamation, and that that error had a bearing, in some way or other, upon the more important questions at issue. After all, the main object of the arbitration was to remove serious grounds of dispute which existed between the two countries, and it would be unfortunate if, by the special exception of this one branch of the subject, there should remain any cause of irritation after the main question had been decided. Again, was certainty a sufficient ground for refusing arbitration, or for specially excluding a particular subject? He ventured to

think that it was exactly these subjects on which both sides are equally certain which lead individuals and nations into the worst quarrels, and, in these, arbitration was most necessary. The House should recollect that, only two years ago, everybody was equally certain about the main question in dispute as they now are upon the subject of recognition. Able writers, who then laughed to scorn the American claims, had now learned to doubt about them, and to find that it was our interest to go to arbitration about them. In view of this change, might not Americans say that it was due rather to a sense of our own interests than to any desire to do justice to them? and may they not also think that another year or two may make further changes in our views at least as great? As to the question of dignity, the American government did not, as he understood, desire that the proclamation of neutrality should be made a question before the arbitrator, but merely that it should be introduced as a topic for discussion, and he could not understand how the dignity of this country could be compromised by this question more than by the more important subject being brought before the arbitrator. He did not advance these views in consequence of an exaggerated feeling of alarm either for the present or for the future. He did not believe that these claims would result in war, although, no doubt, if not disposed of, they would remain as a source of irritation which would render it difficult to settle other matters of difference which might arise in future between the two countries. He was aware there were persons who said that Mr. Seward had raised this difficulty merely for the purpose of deferring a settlement of the matter, and that the Americans would be only too glad to find us at war, in order that they might prey upon our commerce by means of vessels like the *Alabama*. He did not altogether share in that opinion. It was certainly true that, in a moment of irritation, the lower House of Congress had passed a bill to bring their foreign enlistment act into accord with their views of the legal interpretation which our lawyers had put upon ours. But the better sense of the country came to the rescue; it appealed to the honorable past of their country as regarded neutrality towards England, and it pointed out that our foreign enlistment act was, in fourteen different items, more strict than theirs; it showed that, although they complained of our remissness in some cases, they had, in others, obtained the detention of formidable vessels which might have prolonged the war; it pointed out that it was neither honorable nor logical, at the same time, to complain of our breach of neutrality, and to reduce their own act to the same level at which they considered ours to be. He believed that we might look forward to the government of the States honorably endeavoring to fulfill its obligations in the event of our finding ourselves at war; but, then, unless the government was supported by an almost overwhelming public opinion—a sense of duty among its merchants—its efforts would be of little avail, and less there, even, than here. We felt these difficulties. They would feel them still more. The action of their citizens against Spain and Portugal showed to what extent they might be led, and then it would be that history would repeat itself in a vicious circle which public law ought to prevent. Then, again, should we be perfectly satisfied if the same strict line of interpretation was followed to us, namely, the insistence of direct and positive evidence connecting the building of war vessels with the belligerent power, even in cases where the surrounding circumstances were of the most suspicious kind, and where no information was given as to the real destination of the vessel, a requisition which, in fact, was the real cause of the *Alabama* going out, but which, in the case of the rams, was not insisted upon, although, he regretted to say, it was again followed by the present government in the case of the *Cyclone* and the *Tornado*? At this very moment a commission was sitting to report whether any changes ought to be made for the purpose of giving increased efficiency to our laws and bringing them into full conformity with our international obligations. Suppose that commission reported that it was desirable to alter our laws in conformity with our international obligations and to give greater force to them, how should we then stand? Should we find that other countries would take their line of conduct in future from our new finding, or would they not rather take it from our action when neutrals? International law was made up mostly of precedent and usage, and he feared there would be no later precedents than those of the *Alabama* and the *Tornado*. Either we had done right or wrong; either we had fulfilled all our international obligations or we had not; and it was in the interest of the world at large that this question should be determined; because, if we were right, then, by common consent of nations, some change should be made so as to prevent, for the future, such scandalous cases as those to which he had had to advert; if wrong, then a precedent would be removed which, as it stood, threatened to create trouble, and dispute, and ill feeling between other nations, as it had been ourselves and the United States. But there was a higher object in view even than that, namely, that we should set a great example to other nations by doing that which, by our invitation, was resolved upon at the congress of Paris—substitute arbitration for that process of war which might determine which was strongest but not which was right. Above all that, we should adopt that rule with regard to a country with which we had so much in common of blood, religion, language, and government, and with which we had not one real interest that was antagonistic. He regretted that the noble lord lost the opportunity, which he believed had

been offered, for arriving at a settlement of this question. He believed it might be regained; and, if the noble lord could, then, avail himself of it, he would earn and receive the thanks of the people of both countries.

Amendment proposed:

"To leave out from the word 'That' to the end of the question, in order to add the words, 'an humble address be presented to her Majesty that she will be graciously pleased to give directions that there be laid before this House copy of any further papers relative to the negotiations with the United States government for arbitration of the Alabama claims.'" (Mr. Shaw-Lefevre.)—instead thereof.

Question proposed:

"That the words proposed to be left out stand part of the question."

LORD STANLEY. Sir, I think it due to the honorable and learned member who has brought this subject forward, and who has dealt with it in so clear and condensed a manner, to acknowledge that he has said nothing which is calculated to increase any feeling of international irritation that may still remain, or to aggravate those diplomatic complications which have unfortunately arisen. In one portion of his remarks I cannot help expressing my cordial concurrence—I mean in the tribute which he has paid to the high character and accomplishments of the existing United States minister in this country, whose services, unfortunately, we are about to lose. No man has ever had a more difficult part to play than Mr. Adams, and no man, as far as I am enabled to judge, could have played it with greater judgment, temper, and discretion. It is not my duty nor my wish to follow the honorable and learned gentleman into that portion of his speech which related to the conduct of Lord Russell and his colleagues. Lord Russell had many difficulties to encounter, and he has friends and representatives in this House who will be prepared to vindicate anything that may be said in criticism of the steps taken by him. My business is rather with the present aspect of the controversy than with past policy. I certainly regretted that the honorable member should in one part of his speech have displayed a slight tinge of partisanship, which, to do him justice, he generally succeeded in avoiding. The honorable and learned gentleman appeared to regard it as extraordinary that a conservative government should have consented to refer this question to arbitration, and seemed to think that a change had taken place in our opinions consequent on our change of position. Upon that point I must say, though I do not want to revive old points of controversy, that I think it would be very difficult to point out one single word in any speech made by my right honorable friend the first lord of the treasury, or by myself, which could show that we had prejudged the issue to be raised before the arbitrator. I do not put myself forward as having been in this contest a partisan of the northern cause. I have always thought that it was not our duty to throw ourselves in a partisan spirit into the internal disputes of foreign countries. I hold that we are bound to give both sides fair play, to apply, as far as possible, the same rules of international law to both; that we are bound to do that, and, having done that, we are bound to do nothing more. I suppose it is almost unnecessary for any person who occupies the place which I hold to make professions of his desire to settle this controversy, if possible. England can have nothing to gain by keeping it open, and has a great deal to gain by closing it. We have vast commercial relations with the United States, a long line of conterminous frontier; we come across one another, so to speak, in every part of the globe; we have on both sides an enormous load of debt, which neither can wish to increase. We can do each other incalculable harm, and I believe it is equally the wish, as it certainly is the interest, of both nations to remain on amicable terms. I need not, therefore, say that we want to arrange this matter if we can, nor do I think in the present state of the question any difficulty arises from the state of popular feeling in England. So far from that being the case, undoubtedly the change from the predominant sentiment of the years between 1860 and 1864 is so strong that, if I may venture to say so, I think I have detected a tendency on our part to be almost too ready to accuse ourselves of faults which we have not committed, and to assume that in every doubtful point the decision ought to be against us. I do not deny that, as the world goes, that is an error on the right side. Indiscriminate resistance to reasonable demands is mere folly and mischief; but indiscriminate concession to all demands, merely because they are strongly urged, whether they will bear the test of argument or not, is a course which, in the end, is equally likely to lead to inconvenience. What we have to do is to try and find out what are the strict rights of the case, to state the case so ascertained temperately and fairly, to endeavor to do justice as far as we are concerned, and, having done that, to appeal frankly and confidently to the existence of a corresponding spirit in those with whom we have to treat. Now, sir, there never was a case in which it was more desirable to define accurately what are the points to be settled than the one with which we are now dealing, because, upon the other side of the water, and perhaps upon this also, the question has been complicated by all sorts of grievances, to the nature of which the honorable and learned gentleman slightly referred—grievances which I will not call unreal, and which I do not say are unfounded, but still grievances of such a vague and general character that we should find it hard to define them. I do not complain of this, but

merely refer to it as a fact. If we were Northern Americans we should probably entertain pretty much the same feeling. Men who have emerged from a civil war, in which they sacrificed a million of lives, and incurred £500,000,000 of debt, are not for some little time in a position to appreciate with perfect coolness the conduct of those who were in the position of critics and lookers-on in the quarrel. I am not now saying whether in my judgment our course was in every instance one of rigid neutrality; that is the very point we are endeavoring to ascertain by arbitration. But if our neutrality had been the most rigid and most absolute it is possible to conceive, there can be no doubt that we should have fallen short of the expectations of the people of the United States. What they expected from us at the beginning of the contest was, not neutrality pure and simple, but neutrality so far as all material assistance was concerned, coupled, however, with a strong moral sympathy and support. Where such a feeling exists and is disappointed, as it certainly was in this case, it is obvious that the disappointment so produced will find vent in some shape. I mention this because it is the key to a good deal of the exaggerated tone of writing and speaking which has been observable on the other side the Atlantic in the earlier stages of this controversy. And in that point of view I do not regret the time that has passed. On both sides we can discuss the matter very much more calmly and fairly in 1868 than we could in 1864. Passions of the moment pass away, but facts and arguments remain. And, happily, as the case now stands, the controversy, though still pending, is reduced within the narrowest possible limits. Upon the disputed questions of fact and law—questions upon which it was not likely, if possible, that the two governments could come to an agreement—we are of one mind so far as this, that we know we cannot agree, and therefore we are prepared to abide by the decision of a third and, presumably, impartial power. The principle of arbitration, as far as we are concerned, is accepted; and I may say is accepted on both sides, for we differ only upon a point of detail. That is a very important step gained. I am not making it a matter of complaint that it was not gained before, for I recognize most fully that, in a case of this kind, time makes many things easy which were not so at first. We have conceded almost everything that was asked for when this dispute began. I think I am right in saying that if it had been possible to grant a limited arbitration, such as we have now proposed, when it was first asked, the question of the alleged premature recognition of belligerency never would have made its appearance; it was incidentally mentioned, but that was all; but by a peculiar process, which I do not altogether pretend to explain, that grievance, whatever its value may be, seems to have been gaining importance in the minds of American statesmen, and of the American public, just in proportion as on this side of the water has grown up a feeling of desire to remove all other causes of difference. The sole point unsettled between us is this: "You are willing," the United States say, "to refer to arbitration the question of the Alabama and other kindred vessels; are you willing to include as a point in the reference, the question whether you were right or wrong in recognizing the confederates when you did?" To that the answer we have given in substance is that, as at present advised, we cannot see what bearing the two things have on each other. For all practical purposes, as bearing on the events of 1863, you might as well include the question whether we were right or wrong in the war of 1812. There are some persons who do not accept that view of the case. I will therefore endeavor to explain what my view of the question is. I suppose that no human being will contend that at no period during that prolonged struggle of four years the confederates had become entitled to belligerent rights as such. That pretension has never been put forward. But if they were belligerents at some time, and not so when recognized as such, what was the time when they first became invested with that character? Take a date that will test the question. If ever they were belligerents, I suppose they were so after the celebrated battle at Bull's Run. They had then a large force in the field; for a time at least they had achieved a military superiority, and Washington itself was threatened by their armies. Suppose we had recognized the confederates after that battle, would any human being have found fault with us? Could any one have charged us with being precipitate in our recognition? And had we done that, how would it have affected the Alabama question? The Alabama escaped in April, 1862; Bull's Run was fought in July, 1861. If I had chosen to take that line of argument in my dispatch, it would have been competent for me to contend in this way: "I grant we were wrong in recognizing the confederacy when we did; we ought to have done it in August, and not in May. We were six months too soon. But having admitted that, will you, the American government, tell me how your case as regards the Alabama would be in any way affected if we had done what you contended we ought, and made the recognition six months instead of twelve months before the Alabama sailed?" It is on this ground of irrelevancy that I rest more than that of national dignity. But there is another objection to a compliance with the United States demand that this question of recognition included. Would any arbiter deal with it? That is a point on which I find considerable doubt. Arbitration, as we proposed it, was simple in character and not difficult to deal with. Given two belligerents, given a neutral power, the problem to solve is, has that neutral power fulfilled faithfully and effectually the obligations imposed on it by

international law? Now, granting that international law is sometimes vague and uncertain; granting that new circumstances occur not met by precedent, and that much must be left to the discretion of the arbiter, that is still a question governed in the main by recognized international principles, and on which a friendly government would not be unable, and probably not unwilling, to pronounce a decision. But if you complicate the matter by adding to it a question of a totally different character, as to whether a certain political act, the recognition of a belligerent, was or was not suitable to circumstances under which the government was placed, what rule is there to go by? Is it a matter of precedent or moral justice? Are political considerations included also? It is contended that recognition was premature; but premature in what sense and for what purpose? No one will deny that this was a matter affecting us as an independent state, and that we were not merely entitled, but bound by the necessity of the case, to use our own discretion. That doctrine of freedom in such matters has been insisted on, curiously enough, by no parties more strenuously than by the United States government themselves. I will cite two out of many cases. In 1849, only twenty years ago, the United States government proposed to recognize Hungary, then in a state of insurrection, not merely as a belligerent, but to recognize the revolutionary government of Hungary as an independent state. The Austrians complained, as was natural, and a correspondence ensued. It was conducted on the American side by Mr. Webster, certainly not the least able or eminent of American statesmen, and Mr. Webster's reply was in these words:

"That if they had done so, though the step would have been precipitate, and one from which no benefit would have resulted, it would not, nevertheless, have been an act against the law of nations, provided they took no part in the contest against Austria."

Does not that utterance go immeasurably further than anything which has come from us? Such is the doctrine distinctly put forth by a distinguished American statesman. I will cite another case. In 1836 Texas was fighting for independence from the Mexican republic. The question arose about the admission to New York of vessels bearing the Texan flag. The United States government defended the admission of these vessels, and in the course of their argument they used some remarkable words, which I should like to read. They begin by saying that from the beginning of the revolution South American vessels had been admitted under their own or any flag to the ports of the United States, and that the same rule had been observed in civil wars between the various states. [Mr. ROEBUCK. Who is the writer?] The foreign minister of the day; and he goes on:

"It has never been held necessary as a preliminary to the extension of the rights of hospitality to either party" (meaning of course the admission of ships of war to the rights of belligerents) "that the chances of the war should be balanced, and the probability of eventual success determined. For this purpose it has been deemed sufficient that the party had declared its independence, and at the time was actually maintaining it."

Had not the South declared its independence in May, 1861, and was it not maintaining it? In face of these claims put forward by the United States government to absolute freedom of action in such a matter, I confess I do not see that it can be reasonably contended by them that an independent state, acting, as it necessarily must, on its own discretion, should be called upon to pay a pecuniary fine even, although its discretion had been unwisely used. Put it the other way. Suppose we had not recognized the South at the time we did, or we had not recognized it at all—suppose fortune had turned in their favor, and they had succeeded in establishing their independence, would you say that the confederates were entitled to call us to an account for not having recognized them early enough, and by such delay having injured their prospects? So stated, the question seems absurd. But if we are responsible one way we are responsible the other. If damages are to be given for premature recognition as injuring one side, why not for tardy recognition as injuring the other? And then in what position is a neutral power placed whenever a war breaks out? This is not a question for the moment only. It is a question of general international law; it is a question which will create a precedent, and we are bound not merely to do what is convenient for the moment, but to consider the effect which our decision may have on the future. The ground on which I rested in limiting the arbitration, as I proposed to do, was, first, that the United States propose to us a matter for arbitration which is irrelevant to the issue; secondly, that the irrelevant question was one to be decided by considerations of state policy, and not of legal obligation, and therefore is incapable of receiving legal solution; thirdly, that the United States government, in sundry parallel cases, had absolutely refused to admit any responsibility for adopting a similar course; and lastly, that I believe no one would undertake to arbitrate on a case so entirely vague and undefined. I will not now argue the case on its merits, as far as recognition is concerned, for this reason, that I quite agree with the honorable and learned member who brought forward the motion, that the strength of our case is no reason for refusing to arbitrate upon it. But I may just observe that, in recognizing the confederates as belligerents at the time when we did, we were simply declaring, on

May 13, a state of things to be civil war which in three or four official documents of earlier date, since published, Mr. Seward, on the part of the United States government, himself declared to be such. These documents were not private letters but state papers, which have been laid before Congress and printed by authority; they bear date nine, twelve, and sixteen days before the Queen's proclamation. I will read only one, and that shall be brief. On the 4th of May, nine days before the issue of the Queen's proclamation of neutrality, Mr. Seward writes in these terms:

"The insurgents have instituted revolution with open, flagrant, deadly war, to compel the United States to acquiesce in the dismemberment of the Union. The United States have accepted this civil war as an inevitable necessity." (*Correspondence relating to foreign affairs*, accompanying the President's message to Congress in December, 1861, p. 165.)

I should be sorry to say anything that would even look like want of courtesy to the eminent and accomplished diplomatist by whom this correspondence has been conducted, and than whom no man in the United States has probably greater ability or larger experience. But if the question were one which we could discuss face to face, I should venture to ask Mr. Seward whether he could with gravity call upon me solemnly to refer to the arbitration of some neutral power, of some third party, this question—whether we, the British government, had a right on the 13th of May to declare that to be civil war which in various documents, all bearing dates antecedent to the Queen's proclamation, he (Mr. Seward) himself had christened by that name. Let it be noted, also, that the highest court of law in the United States, in a passage which has often been quoted, declared the state of things which then existed to be a state of war. And another argument, familiar to all who have studied the subject, is, that if there were no war there was, of course, no blockade, and we might claim damages for every blockade-runner captured. Claims such as these would mount up to an almost inconceivable total, and I really cannot think that the statesmen of the United States would be willing to let in these enormous claims for the sake of insisting upon a point which, practically, and in its immediate application, is not important, though I admit that indirectly it may have considerable importance. I am glad to believe, and there can, I think, be no doubt, that as there has been a great change of feeling here within the last two years, so on the other side of the water a corresponding change is taking place, now that the question is better understood. I saw a very remarkable article the other day, which was quoted from one of the leading journals in the United States. The passage is very brief, and I shall read a few lines of it. The *New York World* of the 18th of February said:

"The Times" (meaning, of course, the *New York Times*) "concurs fully in the three great points which we made: First, that there is not the remotest chance that any arbitrator likely to be chosen would undertake to say that the Queen's proclamation of neutrality was a wrongful act; second, that this particular question is incapable of being made a subject of arbitration; and third, that it has nothing to do with the merits of our real claim."

The *New York World* treats this as a remarkable admission. And I must say that the fact of such an admission having been made in a leading journal in a country which, perhaps, more than any other, is governed by public opinion as it finds expression from day to day in the newspapers, is an encouraging sign. I do not wish to detain the House; but I think I have said enough to show that the proposed conditions of the reference were not arbitrary or capricious—still less were they such as I have seen it hinted out of doors that they were—mere devices to evade referring the matter to arbitration at all; but that they were founded on an intelligible and, I think, sound principle. If the negotiations have been for a time, I will not say broken off, but suspended, the House will see that the rupture or suspension did not come from our side. We made our offer, and it has been declined. According to ordinary usage, it is now for the complaining party to speak, and if they do not like our plan of arrangement, to propose their own. Something was said by the honorable and learned member as to our language being varied at different stages of the negotiation. It is difficult to remember with accuracy all the arguments which have been put forward in a long controversy; but I can answer for it that my own ideas on the subject never varied. [Mr. SHAW-LEFEVRE. I said that Mr. Seward's language varied.]

Oh, very well, then I will pass that matter over. I am very glad that the honorable and learned member, with his recent American experience, agrees with me as to the general character of the feeling that exists in that country. I have, indeed, heard it said, "You ought to settle this matter at once, or you will have a quarrel." I am as anxious to settle it as any man in any part of this House can be; but I do not believe in the likelihood of the quarrel. I have never concealed my opinion that the American claimants, or some of them, at least, under the reference proposed by us, were very likely to make out their case and get their money. To us the money part of the affair is inappreciably small, especially as we have on our side counter-claims, which, if only a small portion of them hold water—and you never can tell beforehand how these matters will turn out—will reach to a considerable amount, and form a by no means unim-

portant set-off to the claims preferred against us. But I think if matters were fairly adjusted, even if the decision went against us, we should not be disposed to grudge the payment. The expense would be quite worth incurring, if only in order to obtain an authoritative decision as to the position of neutrals in future wars. If, therefore, the Alabama claimants are kept out of what may be due to them, they ought to understand, and I think they will understand, that it is not by the act of our government that this has been done. And though party politics may run high in the United States, I will not believe that any party can be so reckless or insensible to the interests of their own country as to engage in a quarrel, possibly ending in a great and costly war, for the sake of enforcing in one particular way a claim which it is in their power to settle, and probably to settle in their own sense, without any recourse to violence. To do so would be contrary not only to the reasonable views which the American people are in the habit of taking of political affairs, but would be, in the French phrase, for which no English equivalent exists, "*enforcer une porte ouverte*"—breaking open a door that is not locked. I cannot but think that in some way—indirectly, if not directly, and I am not inclined to be very fastidious as to the form—the United States government may be induced to join in measures which may lead to an arrangement. If they decline to do that, it remains to be seen whether any other solution of the question in dispute can be found. Mr. Seward, in these papers and in communications I have received from him through Mr. Adams, has more than once thrown out hints with respect to something in the nature of a general commission which should deal with all the outstanding questions of all descriptions between the two countries. I have verbally, and through Mr. Adams, suggested that he should develop that idea. Speaking as an individual, and without prejudice to what may be done in the future, I should have thought that international questions were better settled one by one; but I am not disposed to reject any reasonable mode of bringing about a settlement, and if we can agree in substance on any mode of bringing about a solution, I do not think either the government, the House, or the country would be disposed to stand out upon a mere matter of form. Before I sit down I may say that the reception of the new British minister at Washington has been not only friendly but cordial, and everything leads me to think that the feeling in the United States toward England is decidedly improving. Now, having stated the facts of the case, and stated them as briefly as I could, I shall leave the matter to the judgment not only of this House and this country, but of all fair and impartial persons on both sides of the Atlantic.

Mr. W. E. FORSTER most sincerely thanked the noble lord for the tone of his speech. He did not pretend to be more anxious for peace between England and America than other honorable members; but he was anxious for it, and he could not conceive any remarks more likely to remove the irritation between the two countries than those offered by the noble lord. He believed that the difficulties which existed were not so great as had been imagined. The honorable and learned member for Reading (Mr. Shaw-Lefevre) made use of too strong an expression when he said that the negotiations had failed. If that had been so, he (Mr. W. E. Forster) should have deeply regretted it, not merely on account of our relations with America, but because he wished to see the principle of arbitration carried out, and he thought that a precedent for it might have been established in the present case. The state of things was simply this: Mr. Seward wished to bring before the arbitrator the question of premature recognition of belligerent rights, and the noble lord said that he should not allow him to do so. He (Mr. W. E. Forster) did not for a moment sympathize with the American government in their claims against this country on account of what they called this premature recognition; but he must say that he did not think that the ground upon which they based their claim was precisely that stated by the noble lord. He did not think that the American government said anything so absurd as that there was no civil war existing when the proclamation of neutrality was issued; but what they said was that though there was war going on in America, there was no war raging at sea, and that it was not our business, as a neutral power, to take notice of what might happen, but not yet happened, a naval war, and that by our proclamation of neutrality as between naval belligerents we hastened the time at which the naval war broke out. That was no doubt an unsound position; but still it was held by a vast number of men, and by men of considerable intelligence, in the United States. It was nowhere so well stated as in the first official dispatch, relating to recognition of belligerency, which passed between the two governments. It must be remembered that, though Mr. Adams, in his first interviews with Earl Russell, protested against this recognition, yet that his first dispatch on the matter was written so recently as April, 1865, in which the ground upon which he put the matter was that it was wrong to acknowledge the South as a belligerent "before they had a single vessel of their own afloat." It was necessary this should be borne in mind, because the wish of the House and the country, in their present temper, was to understand the position taken by the United States government on this subject. He thought, however, that he could give, from his own personal experience, some little ground for believing that the United States government were mistaken in that position, though, certainly, it was more intelligible than that gener-

ally attributed to them. At the time that the neutrality proclamation was issued by our government, he personally was very much interested on behalf of the North. He felt that a war was beginning upon which would depend whether slavery—the greatest curse that ever afflicted the human race—should be extended all over the American Continent, or should receive its death-blow. He was not ashamed to acknowledge that in that war he was a partisan of the North. Having that feeling, he heard that letters of marque had been sent by Mr. Davis to this country; and the question arose how British subjects could be prevented from having anything to do with those letters of marque. He took the best advice he could get, and was told first that vessels sailing under these letters of marque would be pirates; and he believed that fifty years ago they would have been so considered and treated by England. Before, however, taking any steps to impress that view on the House, he consulted the work of Wheaton, a great American authority upon international law, and he found that in his book the law was stated in most distinct terms. Wheaton said:

“Until a revolution is consummated, and while the civil war continues, any neutral government that wishes not to help either of the parties must treat the government *de facto* as a State entitled to the rights of war.”

Upon reading this he felt that if he had come down to the House and said that these vessels should be treated as pirates, he should be at once met with the authority of Wheaton for saying that they were entitled to belligerent rights. Still, there was the question, how vessels under letters of marque were to be prevented from leaving our shores; and he himself asked the government on the 9th of May, 1861, what steps would be taken to prevent the infringement of the law by British subjects? It was in answer to this question that Sir George Lewis for the first time stated that a proclamation of neutrality would be at once issued; and that that would set forth the law, which in general terms was that no British subject should take part in such a war. This proclamation, therefore, was considered by many not as unfriendly towards the United States, but rather as the only way in which British subjects could be prevented from entering into the war; while, however, he by no means sympathized with the convictions of Mr. Seward in reference to the proclamation, yet he could not but think that the noble lord had somewhat misunderstood the position Mr. Seward took upon the subject. In his closing dispatch on the 29th of November, 1867, Mr. Seward said that—

“We are now distinctly informed by Lord Stanley’s letter, that the limited reference of the so-called Alabama claims, which Lord Stanley proposes, is tendered upon the condition that the United States shall waive before the arbitrator the position they have constantly maintained from the beginning, namely, that the Queen’s proclamation of 1861, which accorded belligerent rights to insurgents against the authority of the United States, was not justified on any grounds, either of necessity or moral right, and therefore was an act of wrongful intervention, a departure from the obligation of existing treaties, and without the sanction of the law of nations. The condition being inadmissible, the proposed limited reference is therefore declined.”

He did not understand Mr. Seward’s position to be that the question whether what had been done was according to the law of nations should be referred; but to complain that before entering upon arbitration with regard to the Alabama claims, he was to be compelled to waive his conviction, repeatedly expressed, that the proclamation was premature, and contrary to international law. It would have been too much to expect the noble lord to give up his opinion on the matter; but, on the other hand, he could hardly expect Mr. Seward to concede that the proclamation was called for by the necessity of the case. If he had said, “I refer the two questions, first, whether there is any money due in reference to the Alabama ships, and also whether we broke the law by granting belligerent rights,” it would have been open for us to say, “We will not refer this last question;” but what the noble lord said was, “We will not refer the other matters to arbitration, unless you acknowledge yourself to be wrong in reference to the ground that you have been constantly taking with respect to the proclamation having been premature and contrary to international law.”

LORD STANLEY said he did not require that. He only said he objected to have that a question before the arbitrator.

MR. W. E. FORSTER said he believed that Mr. Seward thought that if he entered upon the arbitration he must acknowledge that the assumption that he had made that the proclamation was not called for was a wrong one, and that the noble lord should not have enforced any such conditions. He did not know why we should have refused arbitration even if Mr. Seward had desired it on the question of recognition, for we had the strongest possible case, and all the noble lord’s arguments might have been brought before the arbitrator instead of as reasons why the arbitration should not be assented to. If arbitration was to mean that which he believed was the intention of the powers who were parties to the treaty of Paris—and which he hoped would be acted upon in future—an attempt to decide a question between two nations by means of the decision of a third party rather than by war or a threat of war, then the fact that we were confident as to what our right was was no ground for not arbitrating, and consequently,

if Mr. Seward had desired to refer this question, he (Mr. W. E. Forster) did not see why his wish should not have been admitted. But, at any rate, at the end Mr. Seward did not ask for this, and the honorable member for Reading was right in saying that his last dispatch bore a different meaning from his first one. He said first that the United States would expect to refer the whole controversy, such as it was found in the correspondence, and this might be supposed to include the question of recognition; but after the noble lord's reply, Mr. Seward took different ground, or so defined his first statement that it bore a different interpretation. He then said that he must be at liberty to insist before the arbitrator that all the proceedings of the British government towards the United States in regard to the rebellion are among the matters connected with the vessels whose depredations are complained of. He thought that what Mr. Seward meant was that he should have the right to allege the recognition as an argument in favor of the claims made; and he (Mr. Forster) could not see why he should not be allowed to do so. He thought that Mr. Seward's argument would be a very bad one; and, of course, the noble lord's representative at the arbitration would have had a right to say that the argument was not relevant; and, indeed, he believed that the representative of the United States at the arbitration would have felt that the argument was so bad that we should never have heard of it again. It was very much to be regretted that after Mr. Seward had taken up this position he should have been called on by the noble lord to eat his own words, but after all he hoped that what had happened was only a hitch in the settlement, for he could not but believe that some means of settlement would be found. Everybody in England, and the large body of influential persons in the United States, desired that the matter should be settled. He believed that there was no party in the United States that did not desire this except the Fenians. If it should turn out that he was right in the supposition that the American government only wanted to make use before the arbitrator of certain arguments, he hoped that the noble lord would not object to their doing so; but would allow those arguments to be used, reserving to himself the right of disproving them. They should further consider whether arbitration was the only means of settling the matter. Tremendous injury had been inflicted on American citizens by means of the attacks upon their ships, and if the present misunderstanding was not settled upon a principle which would carry with it the feeling and moral sense of both countries, there was reason to fear that whenever we engaged in war we would suffer in the same way. What naturally came forward under these circumstances was the wish that international law should be so arranged that in future the inhabitants of both countries should be prevented from carrying on private war. And if America should say, in answer to that proposition, "You must first make recompense for what has passed," why should not that matter be considered? If the two countries—the greatest maritime nations in the world—agreed to some international or municipal law which would prevent the escape of these pirate vessels for the future, we might be quite ready to give indemnity for the past. The noble lord had alluded to the proposition of Mr. Seward. There were now several questions in dispute between the two countries, and it was impossible to believe that a willingness on the part of her Majesty's government to settle them would not be responded to by the government of the United States. He could not but think that if any statesman of high position in England were sent to America by the noble lord, with power to arrange all the matters in dispute, they could all be arranged. He repeated that there was no party in England that did not wish for a settlement, and he believed that there was no such party in America, except those irreconcilable enemies of ours whose only hope lay in such questions remaining unsettled; and if we could get rid of these questions we should strike a greater blow at Fenianism than by anything else which we could do.

SIR GEORGE BOWYER said that the honorable member who had just addressed the House had assumed that the question of the Alabama involved that of the carrying on of private war by the subjects of one country against another country. For his own part he was unable to see the justice of that view. But his object in rising was to call attention to one aspect of this subject which, in his opinion, had not been sufficiently considered. He referred to the bearing on the Alabama question of the doctrine of international law with respect to contraband of war. Some persons supposed that the doctrine established what they termed a conflict of right, because on the one hand private persons are allowed to deal in contraband of war, while on the other belligerents have a right to condemn that contraband of war. Now, with all due respect for those authorities who held this view, he must express his opinion that to talk to a jurist about "conflicting rights" was about the same thing as to talk to a mathematician of a triangle the three angles of which were greater or less than two right angles. For to prevent any man from doing that which he has a right to do is not the exercise of a right, it is a wrong. What, then, was the real principle of the most important doctrine of international law in regard to contraband of war? He need not quote authorities on this point, because the law was so clear. The principle was that no government was bound to make itself responsible for the ordinary trade of its subjects when that trade was carried on with belligerents. If that principle were not laid

down it would be extremely difficult, and perhaps impossible, for a government to maintain neutrality. The sale of a stand of arms or a barrel of gunpowder would compromise the neutrality of a country, and it would, therefore, be necessary for every country, when a war was going on in any part of the world, to keep an inquisitorial surveillance over the whole trade of its subjects, though practically it would be almost impossible to carry out such a surveillance. It was in order to avoid this inconvenience that the doctrine of international law had been established in regard to contraband of war—namely, that the subjects of a neutral country might carry on trade with a belligerent, as if no war existed, while on the other hand the belligerent might seize on the high seas anything which was contraband of war. And for the more clear understanding of that right it had been the habit of belligerents to publish at the commencement of a war a declaration enumerating the articles which they would consider to be contraband of war. Vattel stated the doctrine clearly in a few words, in book 3, chapter 7, of his work on international law. He said :

"If a nation trades in arms, timber, ships, munitions of war, I cannot complain that it furnishes these things to my enemy, provided it does not refuse to sell those articles to me at a reasonable price. It exercises its traffic without intention to injure me, and by continuing that traffic as if I were not at war it gives me no just cause of complaint."

Anything more completely in point it would be difficult to find. Now, let us apply this clear principle, not only of international law, but of sound common sense, to the case of the *Alabama*. The States of the South being at war with the States of the North, sent to certain eminent ship-builders at Liverpool a commission to build a ship according to specification. No doubt the specification showed that the ship was to be used for a warlike purpose, but that was precisely the case contemplated by Vattel. These people traded in ships in the ordinary course of their trade, and were as much at liberty to sell a ship to the North as to the South; and it was not their duty to consider whether the vessel was intended for warfare or for the peaceful operations of commerce. But the Northern States had their remedy. All the Northern States had to do was to capture the *Alabama* and to condemn her as contraband of war. What had the English government to do with the *Alabama*? They were not bound to keep a surveillance over all the ship-building establishments in this kingdom. All that the English government had to consider was that they would have been guilty of a breach of neutrality if they had allowed one belligerent to purchase ships and had prevented the other doing the same. It was only by perfectly impartial conduct towards both belligerents that England could be expected to preserve her neutrality. Now with regard to the foreign enlistment act it seemed to be assumed on one side that that act made an alteration in the position of England with respect to international law; but that could not be maintained by a tittle of sound legal argument. If the foreign enlistment act could be enforced only by the action of government, then the comity of nations might have required that the government should have taken action in the matter of the *Alabama*, stopped the ship from leaving Liverpool, and punished those who had violated the act. Even then, however, it would have been for the English government to have considered whether it would enforce the law or not, because it is a universal principle of public law, founded on the exclusive sovereignty of every government, that within its own territory no country is bound to enforce its municipal law at the dictation of a foreign government. This was the distinction between municipal law and a treaty. If the foreign enlistment act had been a treaty with the United States, then the British government must have enforced the provisions of it; but the foreign enlistment act was a municipal law; municipal laws were made for municipal purposes; and it was the right of every sovereign State to consider, with reference to its own interests and the object its legislature had in view, whether it would or would not, in any particular instance, enforce its own municipal laws. The foreign enlistment act was not one of those acts which could be enforced only at the instance of the government. Any British subject or any foreigner could go into a court of law and call for its enforcement; and the Crown would lend its name to any prosecutor under this act. It was true that power was given to the principal officer of customs to detain a vessel; but that did not impair the statement of the law he had made. It was perfectly competent for the American minister or consul, or anybody whatever to go before a magistrate and lay an information against a ship-builder, and ask for a warrant against him and all concerned in a breach of the law. Thereupon these persons would have been apprehended, and the principal officer of customs, in discharge of a purely ministerial duty, and in obedience to a warrant issued by a competent authority, would have detained the ship. It appeared to him that the government of this country ought to have said to the minister of the United States, "We do not wish to undertake an unlimited responsibility with regard to the dealings of the trade of our subjects in contraband of war, but in any matter which may involve a violation of one of our municipal laws go you into a court of law and lay your information before a magistrate. You will receive redress, and the law, as laid down by judicial authority, will be put in force by the executive." That was the course her

Majesty's government ought to have taken ; but the government of the day committed a great error—an error which gave them the appearance of being responsible. They took action in the matter ; they telegraphed to Liverpool, and sent down persons to stop the Alabama ; and by doing so they made themselves appear to be responsible for the trade of the ship-builders. They appeared to renounce the right which every government has of saying, "According to the rules of international law we are not bound to interfere with the trade of our subjects, and when our subjects do trade with belligerents in things which are to be used for warlike purposes, it is for the other belligerents to take their own remedy by capture." But although the government of the day committed a mistake by interfering in this matter, that did not really alter the merits of the case. What the government did was a work of supererogation ; they did more than they were bound to do, what they were not obliged to do, and might have declined to do. With all respect to the government of the United States, it appeared rather hard when the English government stepped forward and did what international law did not peremptorily require them to do, that they should be made responsible for a slip and a failure in doing what they intended to do. No doubt, it was unfortunate, after the British government undertook to stop the Alabama, that it should have escaped ; but that was an accident. The government of the United States had not imputed fraud or dishonesty to our government. Whether somebody did or did not betray the secrets and intentions of the government was immaterial—the government stood guiltless in the matter. They took action and did what they were not bound to do for the enforcement of the act ; and there the matter ended. The United States government could have no fair and reasonable ground of complaint. He had laid this argument before the House, because this was a part of the question which had not been sufficiently ventilated. He agreed with the honorable member for Reading (Mr. Shaw-Lefevre) that the temperate and quiet discussion of the matter might probably promote a solution of the difficulty, and he was sure there was no one who did not wish to see the matter settled in such a manner as to satisfy even the government of the United States. The feelings of the people of this country were friendly toward the United States, and he believed it was a mistake to suppose that conservative members of the House were less friendly to the United States because they entertained some dislike for the institutions of that country. The question whether the recognition of the South as a belligerent ought or ought not to be included in the reference was one rather for the Crown than for the House of Commons. It was a question of policy depending upon a number of circumstances and facts which were best known to the government and those who had conducted negotiations. There was a considerable degree of doubt upon the subject, and, that being so, the House would act unwisely if it expressed an opinion on one side or the other. If the question of the recognition of the South were referred to arbitration, he believed it would be decided in favor of this country. In saying this he could not give entire assent to some of the arguments adduced from the treasury bench, and by those who took the view of the government. It had been supposed that by the very fact of the establishment of a blockade the government of the United States precluded themselves from denying the quality of a belligerent to the South. That was a mistake, because there was a well-known doctrine of the law of nations called that of "unilateral war," which implied that one side might claim all the rights of belligerents without conceding similar right to the other side ; and no doubt that doctrine would be urged if the question of recognition went to arbitration. It was a doctrine of a subtle nature, and only known to those who had given considerable attention to the subject of international law ; and it was one that was strongly urged by no less an authority than Bynkershoek, who supported it by forcible arguments. It was not clear, as some speakers had stated it, that the doctrine might not be urged successfully against us if the question were referred to arbitration.

Mr. SANDFORD felt indebted to the honorable gentleman who had introduced this subject for having elicited from every member who had spoken a desire of maintaining the friendliest relations between this country and the United States, and a readiness to do everything consistent with national honor. That feeling was shared, he was confident, by every member of the House. The honorable member for Bradford (Mr. W. E. Forster) had referred to the future. Now, he hoped that when we came to consider the future relations of maritime powers it would not be merely with a view to an agreement between England and the United States, but that a congress of all the great maritime powers would be called, so that the municipal law of each country might be modified in accordance with the principles which that congress might determine. He should not have risen but that it appeared to him that the honorable and learned member who had brought this question forward (Mr. Shaw-Lefevre) did not seem to be aware of the ground upon which the case on the part of the United States could be urged. The honorable member seemed to think that the United States complained of the sending forth of the Alabama as a violation of international law. Now, it was clear that any citizen who chose might send out an armed vessel for the South, just as another might send arms to the North, there being in each case the liability to capture as contraband of war. The only ground which they could take was either *mal*

Ides or a lax administration of the law. He presumed they would adopt the latter ground. Had the Alabama, however, been seized on starting, it would have been a questionable act, and might have rendered the government liable to damages, the opinion of no less an authority than Lord Cairns being that such an act would be a straining of the law. It would only have been the case of the *Alexandra* over again. If, on the other hand, only municipal law had been violated, there arose the question who were the best judges of our municipal law? Surely the law officers of the Crown. This was the principle laid down in the dispatch of Lord Russell, which had been quoted, and adopted by the noble lord the member for King's Lynn when he came into office. He had no wish to find fault with the noble lord's policy, because the noble lord, (Lord Stanley,) he was sure, had been actuated by a sincere wish of maintaining friendly relations with the United States, but it seemed to him that he had assumed a heavy responsibility in admitting the principle of submitting to arbitration the question of a lax administration of municipal law by the executive, for at some future time it might bring upon this country a serious liability. It would be in the memory of honorable members that some years ago the Austrian government called our attention to the fact that an extensive fabrication of Hungarian notes was going on in this country. The English government took action upon the matter, but too late, and the notes went forth and were employed for the purposes of the Hungarian rebellion. Now, on the noble lord's principle, we might have been held responsible for the injury sustained by Austria through that rebellion. Whether the principle was right or wrong he would not say, but it was a perfectly new one in international law, and might involve disagreeable consequences on some future occasion. Within the last few months he had met a great number of Americans, and they seemed animated with a good feeling towards England; but he had found that though perfectly reasonable and moderate on every other subject, they became very excited the moment the Alabama claims were mentioned. This indicates a deep-seated feeling of injustice, the existence of which was much to be deplored, and he could not but think that if a little time were allowed for feelings of irritation to subside, negotiations might be resumed in a calm spirit. Should they be resumed, he would offer a suggestion to the noble lord with respect to the choice of a negotiator. He should not recommend any noble lord, for he did not believe the Americans were such snobs and flunkies as they were sometimes supposed to be; indeed, he was sure they were not one-tenth part so guilty as ourselves. There was one man who, he thought, was especially suited to the post—a man whose name was a household word throughout the United States, as a staunch friend of that country—he referred to the honorable member for Birmingham, (Mr. John Bright.) [A laugh.] The honorable gentleman who laughed could not have properly considered the question, for what was the object to be sought in selecting a negotiator? Was it not that the negotiations might arrive at a speedy and successful termination? Well, who was so likely to bring that about—who was so likely to conciliate our opponents as the honorable member for Birmingham? The suggestion might not find favor with some honorable gentlemen on the opposite bench, but he believed it would find great favor in the country. The appointment of one who had always shown a friendly spirit towards the United States would go far to remove the feeling of injustice under which the Americans now labored, and he would be able, if any man were, to carry the negotiations to a satisfactory termination.

MR. J. STUART MILL. I think, sir, that no one can have listened to this debate without being ready to admit that it has elicited statements of a singularly gratifying and satisfactory nature, and it might have been hoped that we were approaching to a very great degree of unanimity upon the essentials of the question, had it not been for the two speeches of the honorable gentlemen who have just preceded me, and who have revived points of international law in connection with this dispute in a manner that would almost lead one to suppose they had not read very attentively the discussions which have previously taken place on the subject. I say this with the more regret, because no fault can be found with the tone or feeling of either of those honorable gentlemen; and in the case of the honorable gentleman opposite, (Mr. Sandford,) an amount of good feeling towards America has been displayed which may, perhaps, surprise some who sit on this side of the House, but which does not surprise me. It seems to me that, in reviving these questions, those honorable gentlemen have ignored the distinction which has been the fundamental and grand point on which the discussion has turned—I allude to the broad distinction which writers on international law recognize between trade in contraband of war, and the use of a neutral country as a base of military and naval operations. It is true, and has not been denied, that a ship of war might be exported from England to one of two belligerents with no more objection or violation of international law than there would be in the case of exporting military stores; but in that case there was this condition, that the ship ought to go direct to the port of the belligerent for whom she is intended, without any intermediate hostile operations, and thence might go forth to carry devastation and destruction among the ships and commerce of the other belligerent. But what has been done in the case of the Alabama was very different from this. An emissary was sent by the Confederate States

to make arrangements for the fitting out in this country of a naval expedition to levy war against the commerce of the North. The honorable and learned member for Dundalk (Sir George Bowyer) appeared to think that that would be fair if both parties were allowed to be equally benefited; but practically both parties never can be equally benefited, for, although the liberty may ostensibly be the same to each, the fact generally is that only one party needs it, and is benefited, while the other is not benefited. Again, if a neutral country allows its territory to be made the basis from which a hostile expedition can be fitted out, it permits this to be done in a place which the opposite party is not permitted to go to for the purpose of obstructing the operations. Suppose the Alabama had been fitted out in a confederate port, it would have been in the power of the North, on receiving intelligence of this being the case, to have cut the vessel out of the harbor, or intercepted its departure, or to have bombarded and destroyed the dockyard in which it was under construction. But they could not do that in a neutral country, and consequently such a country, in permitting such a proceeding, would voluntarily have committed a breach of neutrality, by giving the benefit of its protection to a portion of the naval force of one belligerent against the other. As to the question whether this country can be required by a foreign country to enforce its own municipal laws, the honorable member for Maldon (Mr. Sandford) has gone so far as to attach blame to the noble lord the secretary for foreign affairs for allowing that question to be referred to an arbitrator. But I apprehend the noble lord has assented to nothing of the kind. The question is not whether we have permitted a violation of our municipal law, with which foreign countries have nothing to do; the question is, whether foreign countries have a right to require of us the fulfillment of our international duties? It is on the ground of international duty, and on that ground only, that they can bring any complaint against us. The question is simply this: are we bound by international law to prevent certain things from being done, and being so bound, did we do all we could to fulfill that duty? It may have been that we were under obligations to make fresh municipal laws if those in existence were not sufficient to enable us to fulfill our international duties. Without going any further into this question of international law, I congratulate the House and the country on the fact, now so obvious, that the point at issue is an extremely small one. But if a very small point prevents the settlement of a very great question, the smaller that point the greater the reason for lamentation, and possibly for blame. I do not think there is much room in the present case for blame in any quarter, because this discussion, as well as the correspondence—and especially this discussion—has brought out evidence that the two parties to the correspondence have not thoroughly understood one another. The noble lord (Lord Stanley) has not thoroughly understood what the United States demanded; and, on the other hand, the United States government has not thoroughly what the noble lord refused. I apprehend that the United States have never demanded that the question, whether we were premature in recognizing the belligerent rights of the confederates, should be referred to the arbitrator. I do not think they have ever claimed that, or possibly could claim it, because they have never maintained that our recognition, even if premature, was a violation of international law. I have seen it admitted again and again in strongly-written statements of American writers, and even, I believe, in the writings of Mr. Seward himself, that our recognition of belligerent rights was a thing about the time of which we had by international law a right to decide for ourselves. It was urged that what we did was unfriendly, precipitate, and even unprecedented in its precipitation; but I am not aware that it has ever been contended that by our act, unfriendly, precipitate, and unprecedented though it might have been, we committed any violation of international law for which we owed them reparation. It has been observed by my honorable friend the member for Reading (Mr. Shaw-Lefevre) in his very able and conclusive speech, and it has also been repeated in the very valuable remarks of my honorable friend the member for Bradford, (Mr. W. E. Forster,) that what the Americans claim is that they should be allowed to use this early recognition as an argument to convince the arbitrator that the depredations of the Alabama would probably not have taken place at all, or not to so great an extent, if it had not been for this unfriendly act on our part. They contend that inasmuch as they have a right to reparation on different grounds, they have a right to show that this conduct on our part has made the evil worse than what it would otherwise have been. Whether this would be a good argument or not I will not say; but if it is a relevant one, they ought to be allowed to use it; and, if it is not relevant, why should you stipulate for its exclusion? If you are to stipulate for the exclusion of every frivolous or irrelevant argument, I fear that you will have a very long list of such stipulations. Surely, any one who is competent to arbitrate between two great states is competent to decide also what are relevant and what are frivolous arguments. I cannot help thinking that no impartial person would have any difficulty in allowing either side full liberty to introduce what argument it pleased, and that we might safely allow him to listen to this or to anything else that might be urged in aggravation of the claims against us for damages. Would it be worth while to exclude one fallacious argument when we cannot exclude all? We must leave some latitude, limited only by

the check which the good sense and forbearance of the disputants on either side would impose upon them. The United States might stipulate on their part that we should not use irrelevant arguments, but they have not done so. This, however, is only a part of the case; and, perhaps, I should not have risen if I had not wished to say how cordially I welcome those hints which have been thrown out by the noble lord, (Lord Stanley,) and the observations which have been made by my honorable friend (Mr. W. E. Forster) as to the possibility of our settling this question in some other way than by arbitration. Indeed I do not very clearly see what arbitration is specially required for. The case is this: I believe there are few in this country now, and, but for the last two speakers, I might have said I should hope there were none in this House, whatever might have been the case formerly, who were disposed to deny that we owed reparation of some sort, or in some degree, to the United States; it is quite clear that the noble lord thinks so, and, therefore, this is not a case where we want arbitration. If we owe anything we must pay it; and what we want is some one to say, not whether we ought to pay, but how much. This would be best decided, not by an arbitrator, but by a mixed commission. The principal duty which this mixed commission would have to discharge would be to investigate each particular claim, and to say what might be rejected altogether and what had nothing particular to do with the depredations of the Alabama. It would have, in fact, to ascertain the real damage which the commerce of the United States had received from this act of negligence on our part in letting the Alabama leave our ports. I cannot but think that there is a great increase of good and friendly feeling on both sides. The noble lord admits that the Americans are coming to more reasonable views, and, with the great change of opinion which has taken place in this country, I venture to think that there are now few people who do not believe that the arbitrator would decide against us, and that it would be extremely for the interests of the country that he should so decide. In this state of things, if some person—I will not say my honorable friend the member for Birmingham, (Mr. Bright,) but if any person, not unacceptable to the Americans, were sent to them and negotiations reopened; if those negotiations began with an admission that we owed them reparation, and that the object was merely to ascertain what was the amount that was reasonably due from us, I cannot believe that there would be any serious difficulty in arriving at a settlement without going beyond the two disputants. I most earnestly hope that something of this sort was intended in the hint which Mr. Seward has thrown out. It is, besides, not unworthy of consideration that the grand point is the settlement of what is to be henceforth the law of nations; and that question is settled, so far as we are concerned, the moment we admit that reparation is due from us. If we admit that we owe reparation for the depredations which the Alabama, without any bad intention on our part, was enabled to commit, then I apprehend that a question of international law, which was much disputed, and which may again be the subject of quarrel, will, so far as this country and the United States are concerned, be forever settled.

MR. GLADSTONE. Sir, the observations which I have to make are very few, and they will be strictly confined to the point before the House. I cannot, however, allow the debate to close without expressing my obligations to my honorable friend the member for Reading (Mr. Shaw-Lefevre) for the very temperate and able manner in which he brought this subject before the House. I am bound, also, to express my obligations to the noble lord, the secretary of state for foreign affairs, on account of the statement which he made, and the spirit to which the whole of that statement was conceived. That was a speech of the most thorough equity, both to those who preceded him in office, and to those with whom he has come in contact during these very difficult negotiations. In referring to the proceedings of Earl Russell he fairly stated the difference made by time and circumstances in the nature of the very same proposal and in the way of handling it, when it proceeds from the very same parties. Bearing that in mind, I think I may admit that the noble lord, when he determined to make his proposal for arbitration, exercised a wise discretion, and, without in any degree compromising the honor of this country, took a step that was likely to lead to the termination of a difficulty of a very serious character. I listened with great respect to the speech of my honorable friend who has just sat down, and there was one very material portion of that speech in which I concur. I am not able to understand from the papers before the House on what precise point it was that the negotiations came to a close. My honorable friend, however, put his construction upon the expressions used by Mr. Seward in declining to waive his title to bring a certain question before the arbitrator. That construction is entirely different from the construction of the noble lord. I must own that in reading these papers—having no other sources of information open to me than those which are open to my honorable friend—I am not able to decide what was really the meaning of Mr. Seward, and in what manner he intended to treat the question of belligerent rights when it should come before the arbitrator. If he intended to obtain the judgment of the arbitrator upon the question whether we were justified in our recognition of the belligerent rights of the South, then that is one aspect of the case. But if Mr. Seward intended to treat it as a matter of collateral illustration, and to show incidentally the mischief which resulted to the United States as a consequence of that act, or to show

that we were not sufficiently alive to our duty as neutrals, then the question would assume quite a different aspect. I own that if the effect of the speech of the noble lord had been to leave us without any prospect of the practical resumption of the negotiations, I should have regarded with very great pain and regret what appears to me to be an ambiguity quite beyond any power of solution by us. My honorable friend who has just sat down may be right in the construction which he puts upon the words of Mr. Seward. If we look narrowly at the words of Mr. Seward in his letter of the 29th of November, 1867, we find that all he refuses is to waive by a preliminary admission his title to contend before the arbitrator that the Queen's proclamation was not justified. I think I may proceed with safety so far as to congratulate the noble lord on the effect which he evidently had produced on the mind of Mr. Seward between the date at which Mr. Seward first proposed to refer the whole controversy as it originally stood in the papers, and the date at which he made the comparatively limited claim that he should not be required by a preliminary admission to waive his contention before the arbitrator that the matter of the Queen's proclamation is relevant to the main issue. I am bound, however, to say that in one opinion expressed by my honorable friend who has just spoken I am not able to concur, and I notice it simply because it is not desirable that a misunderstanding should exist on a point of fact. I understood my honorable friend to say that he thought there were no, or at least but few, members of this House who would hesitate to admit that reparation, in some form or other, is due from us to the United States in the matter of the Alabama, and he treated the speech of the noble lord as having conveyed on the part of the noble lord the admission that, although we might go before the arbitrator, it would be with the expectation that the arbitration would be against us. I confess, sir, that, whether rightly or wrongly, I did not so understand the speech of the noble lord. But, whether I understood rightly or wrongly the noble lord's speech, I must frankly own that, although I shall be thoroughly satisfied if this question can be brought before the judgment of a tribunal more impartial than our own, yet I certainly am not prepared to make the admission which my honorable friend thinks will universally and without question be made—that reparation is due from us to America in the matter of the Alabama. The question of whether any what may fairly be called *laches* can be charged against us in the case I take to be the very question which is to be referred. But, undoubtedly, if we are all of opinion, or if the great majority of us are of opinion, that the arbitrator is to decide against us, the meaning of that is that we are of opinion we have committed an international wrong; and if we have committed such a wrong, then we ought not to go before the arbitrator at all but we should by our own vote and by our own action tender reparation. I do not at all wonder that the government of the United States should feel that they have ground for complaint in the case of the Alabama. But, on the other hand, I confess it appears to me that when we go before an arbitrator, if we do go before him, we may do so with a perfectly good and clear conscience, prepared to contend that if any failure or miscarriage has occurred—and some failure or miscarriage did occur—it was a failure or miscarriage of such a nature as is necessarily incidental to all administration of laws by human hands, and that we may very fairly and with perfect honor abide the issue, whatever it may be. I confess, also, that I am afraid, if I rightly understood my honorable friend, that he was rather sanguine in his assumption that by admitting the claim of the United States to compensation for the damage inflicted by the Alabama we should *ipso facto* secure the settlement of these difficult and controverted questions of international law for the future. I own it seems to me that if any such general settlement is to be had in the first place it cannot be had through the mere reference of any disputed question arising between England and the United States, and confined to them alone. A great question of international law no authority can suffice to rule without the concurrence of all the powers, or, at any rate, all the principal, and especially all the important maritime powers of the world. Therefore I think we must be very careful lest we should assume the matter which is in the hands of the noble lord to be one admitting of easier settlement than it will really be found to be. What is in truth the construction to be put upon these letters is a matter which we could not now critically pursue, even had we less confidence in the judgment and the intentions of the noble lord than I am happy to admit is the case. This, at least, I think I am perfectly safe in saying that we were all glad to hear the closing sentences of the noble lord's speech. From those closing sentences I infer that although this correspondence may have dropped in the special and particular form in which it appears before us, yet the friendly and amicable prosecution of the question has not dropped at all, and that there is now in the hands of her Majesty's government a communication from the government of the United States, which communication is likely to be developed and pass into its further stages, and which will be, or, at least, may be, effectual, as far as we can judge from the manner in which it has been begun, for the settlement of this question. Sir, if that is so, I can only say I think that while on the one hand we have every reason to believe that the honor and the interests of this country will be safe in the keeping of the noble lord, the noble lord on his part may rest perfectly assured that there will be

in every part of this House, as well as among every class of the people, a disposition to strengthen his hands as far as may be in our power, and to encourage him in the prosecution of a difficult, an arduous, yet a most honorable task—namely, that of bringing to an amicable conclusion a controversy which, if unfortunately it took an unfavorable turn, would lead to consequences too disastrous to be dwelt upon for a moment. I can therefore with satisfaction only repeat the acknowledgment to the noble lord personally for the fair manner in which he treated this question with respect to his predecessors as well as to those with whom he is in communication, with which I commenced the few remarks that I have made.

Amendment, by leave, withdrawn.

APPENDIX No. XXXI.

SPEECH OF THE HON. CHARLES SUMNER, OF MASSACHUSETTS, DELIVERED IN EXECUTIVE SESSION OF THE UNITED STATES SENATE, APRIL 13, 1869, ON THE OCCASION OF THE REJECTION BY THAT BODY OF THE JOHNSON-CLARENDON CONVENTION FOR THE SETTLEMENT OF ALL OUTSTANDING CLAIMS BETWEEN THE UNITED STATES AND GREAT BRITAIN.*

[From the Appendix to the Congressional Globe, first session, forty-first Congress, pages 21-26.]

IN EXECUTIVE SESSION OF THE SENATE April 13, 1869.

ON THE JOHNSON-CLARENDON TREATY FOR THE SETTLEMENT OF CLAIMS.

[*Injunction of secrecy removed by order of the Senate.*]

Mr. SUMNER. Mr. President, a report recommending that the Senate do not advise and consent to a treaty with a foreign power, duly signed by the plenipotentiary of the nation, is of rare occurrence. Treaties are often reported with amendments, and sometimes without any recommendation; but I do not recall an instance, since I came into the Senate, where such a treaty has been reported with the recommendation which is now under consideration. The character of the treaty seemed to justify the exceptional report. The committee did not hesitate in the conclusion that the treaty ought to be rejected, and they have said so.

I do not disguise the importance of this act; but I believe that in the interest of peace, which every one should have at heart, the treaty must be rejected. A treaty which, instead of removing an existing grievance, leaves it for heart-burning and rancor, cannot be considered a settlement of pending questions between two nations. It may seem to settle them, but does not. It is nothing but a snare. And such is the character of the treaty now before us. The massive grievance under which our country suffered for years is left untouched; the painful sense of wrong planted in the national heart is allowed to remain. For all this there is not one word of regret or even of recognition; nor is there any semblance of compensation. It cannot be for the interest of either party that such a treaty should be ratified. It cannot promote the interest of the United States, for we naturally seek justice as the foundation of a good understanding with Great Britain; nor can it promote the interest of Great Britain, which must also seek a real settlement of all pending questions. Surely, I do not err when I say that a wise statesmanship, whether on our side or on the other side, must apply itself to find the real root of evil, and then, with courage tempered by candor and moderation, see that it is extirpated. This is for the interest of both parties, and anything short of it is a failure. It is sufficient to say that the present treaty does no such thing, and that whatever may have been the disposition of the negotiators, the real root of evil remains untouched in all its original strength.

I make these remarks merely to characterize the treaty and prepare the way for its consideration.

THE PENDING TREATY.

If we look at the negotiation, which immediately preceded the treaty, we find little to commend. You have it on your table. I think I am not mistaken when I say that

* Commented on by Mr. Thornton in his dispatch to the Earl of Clarendon April 19, 1869, (see vol. III, p. 783.)

it shows a haste which finds few precedents in diplomacy, but which is explained by the anxiety to reach a conclusion before the advent of a new administration. Mr. Seward and Mr. Reverdy Johnson both unite in this unprecedented activity, using the Atlantic cable freely. I should not object to haste or to the freest use of the cable, if the result were such as could be approved; but, considering the character of the transaction, and how completely the treaty conceals the main cause of offense, it seems as if the honorable negotiators were engaged in huddling something out of sight.

The treaty has for its model the claims convention of 1853. To take such a convention as a model was a strange mistake. This convention was for the settlement of outstanding claims of American citizens on Great Britain, and of British subjects on the United States, which had arisen since the treaty of Ghent in 1815. It concerned individuals only and not the nation. It was not in any respect political; nor was it to remove any sense of national wrong. To take such a convention as the model for a treaty which was to determine a national grievance of transcendent importance in the relations of two countries marked on the threshold an insensibility to the true nature of the difference to be settled. At once it belittled the work to be done.

An inspection of the treaty shows how from beginning to end it is merely for the settlement of individual claims on both sides, putting both batches on an equality—so that the sufferers by the misconduct of England may be counterbalanced by British blockade-runners. It opens with a preamble, which, instead of announcing the unprecedented question between the two countries, simply refers to individual claims which have arisen since 1853—which was the last time of settlement—some of which are still pending and remain unsettled. Who would believe that, under these words of common place, was concealed that unsettled difference which has already so deeply stirred the American people, and is destined until finally adjusted to occupy the attention of the civilized world? Nothing here gives notice of the real question. I quote the preamble, as it is the key-note to the treaty:

"Whereas claims have at various times since the exchange of the ratifications of the convention between Great Britain and the United States of America, signed at London on the 8th of February, 1853, been made upon the government of her Britannic Majesty on the part of citizens of the United States, and upon the government of the United States on the part of subjects of her Britannic Majesty; and whereas *some of such claims are still pending and remain unsettled*, her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a convention."

The provisions of the treaty are for the trial of these cases. A commission is constituted, which is empowered to choose an arbitrator; but in the event of a failure to agree, the arbitrator shall be determined "by lot" out of two persons named by each side. Even if this aleatory proceeding were a proper device in the umpirage of private claims, it is strangely inconsistent with the solemnity which belongs to the present question. The moral sense is disturbed by such a process at any stage of the trial; nor is it satisfied by the subsequent provision for the selection of a sovereign or head of a friendly state as arbitrator.

The treaty not merely makes no provision for the determination of the great question, but it seems to provide expressly that it shall never hereafter be presented. The petty provision for individual claims, subject to a set-off from the individual claims of England, so that in the end our country may possibly receive nothing, is the consideration for this strange surrender. I borrow a term from an English statesman on another occasion, if I call it a "capitulation." For the settlement of a few individual claims we condone the original, far-reaching, and destructive wrong. Here are the plain words by which this is done:

"The high contracting parties engage to consider the result of the proceedings of this commission as a full and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention, and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled and barred, and thenceforth inadmissible."

All this I quote directly from the treaty. It is article five. The national cause is handled as nothing more than a bundle of individual claims, and the result of the proceedings under the proposed treaty is to be a "full and final settlement," so that hereafter all claims "shall be considered and treated as finally settled and barred and thenceforth inadmissible." Here is no provision for the real question, which, though thrust out of sight, or declared to be "finally settled and barred," according to the terms of the treaty, must return to plague the two countries. Whatever the treaty may say in terms, there is no settlement in fact, and until this is made there will be a

constant menace of discord. Nor can it be forgotten that there is no recognition of the rule of international duty applicable to such cases. This, too, is left unsettled.

While doing so little for us the treaty makes ample provision for all known claims on the British side. As these are exclusively "individual" they are completely covered by the text, which has no limitations or exceptions. Already it is announced in England that even those of "confederate bondholders" are included. I have before me an English journal which describes the latter claims as founded on "immense quantities of cotton, worth at the time of their seizure nearly two shillings a pound, which were then in the legal possession of those bondholders;" and the same authority adds, "these claims will be brought, indifferently with others, before the designed joint-commission whenever it shall sit." From another quarter I learn that these bondholders are "very sanguine of success under the treaty as it is worded, and certain it is that the loan went up from 0 to 10 as soon as it was ascertained that the treaty was signed." I doubt if the American people are ready just now to provide for any such claims. That they have risen in the market is an argument against the treaty.

THE CASE AGAINST ENGLAND.

Passing from the treaty, I come now to consider briefly, but with proper precision, the true ground of complaint; and here again we shall see the constant inadequacy of the remedy now applied. It is with reluctance that I enter upon this statement, and I do it only in the discharge of a duty which cannot be postponed.

Close upon the outbreak of our troubles, just one month after the bombardment of Fort Sumter, when the rebellion was still undeveloped, when the national government was beginning those gigantic efforts which ended so triumphantly, the country was startled by the news that the British government had intervened by a proclamation, which accorded belligerent rights to the rebels. At the early date when this was done the rebels were, as they remained to the close, without ships on the ocean, without prize courts or other tribunals for the administration of justice on the ocean, without any of those conditions which are the essential prerequisites to such a concession; and yet the concession was general, being applicable to the ocean and the land, so that by British fiat they became ocean belligerents as well as land belligerents. In the swiftness of this bestowal there was very little consideration for a friendly power; nor does it appear that there was any inquiry into those conditions-*precedent* on which it must depend. Ocean belligerency being a "fact," and not a "principle," can be recognized only on evidence showing its *actual existence*, according to the rule, first stated by Mr. Canning and afterward recognized by Earl Russell. But no such evidence was adduced; for it did not exist and never has existed.

Too much stress cannot be laid upon the rule that belligerency is a "fact" and not a "principle." It is perhaps the most important contribution to this discussion, and its original statement, on the occasion of the Greek revolution, does honor to its author, unquestionably the brightest genius ever directed to this subject. According to this rule, belligerency must be proved to exist; it must be shown. It cannot be imagined or divined or invented; it must exist as a "fact" within the knowledge of the world, or at least as a "fact" susceptible of proof. Nor can it be inferred on the ocean merely from its existence on the land. From the beginning, when God called the dry land earth and the gathering of the waters called he seas, the two have been separate, and the power over one has not necessarily implied power over the other. There is a dominion of the land and a dominion of the ocean. But, whatever power the rebels possessed on the land, they were always without power on the ocean. Admitting that they were belligerents on the land, they were never belligerents on the ocean:

"The oak leviathans, whose huge ribs make
Their clay creator the vain title take
Of lord of these, and arbiters of war;"

these they never possessed. Such was the "fact" that must govern the present question. The rule, so simple, plain, and intelligible, as stated by Mr. Canning, is a decisive touch-stone of the British concession, which, when brought to it, is found to be without support.

Unfriendly in the precipitancy with which it was launched, this concession was more unfriendly in substance. It was the first stage in the depredations on our commerce. Had it not been made, no rebel ship could have been built in England. Every step in her building would have been piracy. Nor could any munitions of war have been furnished. Not a blockade-runner, laden with supplies, could have left the English shores, except under a kindred penalty. The direct consequence of this concession was to place the rebels on an equality with ourselves in all British markets, whether of ships or munitions of war. As these were open to the national government, so were they open to the rebels. The asserted neutrality between the two began by this tremendous concession when rebels, at one stroke, were transformed not only into belligerents but into customers.

In attributing to that bad proclamation this peculiar influence, I follow the authority of the law lords of England, who, according to authentic report, announced that without it the fitting out of a ship in England to cruise against the United States would have been an act of piracy. This conclusion was clearly stated by Lord Chelmsford, ex-chancellor, speaking for himself and others, when he said: "If the southern confederacy had not been recognized as a *belligerent power*, he agreed with his noble and learned friend (Lord Brougham) that, under these circumstances, if any Englishman were to fit out a privateer for the purpose of assisting the Southern States against the Northern States, *he would be guilty of piracy.*" This conclusion is only according to the analogies of law. It is criminal for British subjects to forge bombs or hand-grenades to be employed in the assassination of a foreign sovereign at peace with England, as when Bernard supplied from England the missiles used by Orsini against the life of the French Emperor—all of which is illustrated by Lord Chief Justice Campbell, in his charge to the jury on the trial of Bernard, and also by contemporaneous opinions of Lord Lyndhurst, Lord Brougham, Lord Truro, and, at an earlier day, by Lord Ellenborough in a case of libel on the First Consul. That excellent authority, Sir George Cornwall Lewis, gives a summary drawn from all these opinions, when he says: "The obligation incumbent upon a state of preventing her soil from being used *as an arsenal* in which the means of attack against a foreign government may be collected and prepared for use is wholly independent of the form and character of that government." (On Extradition, page 75.) As every government is constrained by this rule, so every government is entitled to its safeguards. There can be no reason why the life of our republic should be less sacred than the life of an emperor, or should enjoy less protection from British law. That England became an "arsenal" for the rebels we know, but this could not have been unless the proclamation had prepared the way.

The only justification that I have heard for this extraordinary concession, which unleashed upon our country the furies of foreign war to commingle with the furies of rebellion at home, is that President Lincoln undertook to proclaim a *blockade* of the rebel ports. By the use of this word "blockade" the concession is vindicated. Had President Lincoln proclaimed a *closing* of the rebel ports, there could have been no such concession. This is a mere technicality. Lawyers might call it an *aperçus juris*; and yet on this sharp point England hangs her defense. It is sufficient that in a great case like the present where the correlative duties of a friendly power are in question, an act fraught with such portentous evil cannot be vindicated on a technicality. In this debate there is no room for technicality on either side. We must look at the substance and find a reason in nothing short of overruling necessity. War cannot be justified merely on a technicality; nor can the concession of ocean belligerency to rebels without a port or prize court. Such a concession, like war itself, must be at the peril of the nation making it.

The British assumption, besides being offensive from mere technicality, is inconsistent with the proclamation of the President, taken as a whole, which, while appointing a blockade, is careful to reserve the rights of sovereignty, thus putting foreign powers on their guard against any premature concession. After declaring an existing insurrection in certain States, and the obstruction of the laws for the collection of the revenue, as the motive for action, the President invokes not only the law of nations but the "laws of the United States," and, in further assertion of the national sovereignty, declares rebel cruisers to be pirates. Clearly the proclamation must be taken as a whole, and its different provisions so interpreted as to harmonize with each other. If they cannot stand together, then it is the "blockade" which must be modified by the national sovereignty and not the national sovereignty by the blockade. Such should have been the interpretation of a friendly power, especially when it is considered that there are numerous precedents of what the great German authority, Heffter, calls "pacific blockade," or blockade without concession of ocean belligerency, as in the case of France, England, and Russia against Turkey, 1827; France against Mexico, 1837-'39; France and Great Britain against the Argentine Republic, 1838-'48; Russia against the Circassians, 1831-'36, illustrated by the seizure of the Vixen, so famous in diplomatic history, (*Hautefeuille, des Droits et des Devoirs des Neutres.*) Cases like these led Heffter to lay down the rule that "blockade" does not necessarily constitute a *state of regular war*, (*Droit International*, § 112, 121,) as was assumed by the British proclamation—even in the face of positive words by President Lincoln asserting the national sovereignty and appealing to the "laws of the United States." The existence of such cases was like a notice to the British government against the concession so rashly made. It was an all-sufficient warning, which this power disregarded.

So far as is now known, the whole case for England is made to stand on the use of the word "blockade" by President Lincoln. Had he used any other word the concession of belligerency would have been without justification, even such as is now imagined. It was this word which, with magical might, opened the gates to all those bountiful supplies by which hostile expeditions were equipped against the United States. It opened the gates of war. Most appalling is it to think that one little word, unconsciously used by a trusting President, could be caught up by a friendly power and made to play such a part.

I may add that there is one other word often invoked for apology. It is "neutrality," which, it is said, was proclaimed between two belligerents. Nothing could be fairer, always provided that the "neutrality" proclaimed did not begin with a concession to one party, without which this party would be powerless. Between two established nations, both independent, as between Russia and France, there may be neutrality; for the two are already equal in rights and the proclamation would be precisely equal in its operation. But where one party is an established nation and the other is nothing but an odious combination of rebels, the proclamation is most unequal in operation; for it begins by a solemn investiture of rebels with all the rights of war, saying to them, as was once said to the youthful knight, "Rise; here is a sword; use it." To call such an investiture a proclamation of neutrality is a misnomer. It was a proclamation of equality between the national government on the one side and rebels on the other, and no plausible word can obscure this distinctive character.

Then came the building of the pirate ships one after another. While the Alabama was still in the ship-yard it became apparent that she was intended for the rebels. Our minister at London and our consul at Liverpool exerted themselves for her arrest and detention. They were put off from day to day. On the 24th of July, 1862, Mr. Adams "completed his evidence," accompanied by an opinion from the eminent barrister, Mr. Collier, afterward solicitor general, declaring the plain duty of the British government to stop her. Instead of acting promptly by the telegraph, five days were allowed to run out, when at last, too tardily, the necessary order was dispatched. Meanwhile the pirate ship escaped from the port of Liverpool by a stratagem, and her voyage began with music and frolic. Here beyond all question was negligence, or, according to the language of Lord Brougham on another occasion, "crass negligence," making England justly responsible for all that ensued.

The pirate ship found refuge in an obscure harbor of Wales, known as Moelfra Bay, where she lay in British waters from half past seven o'clock p. m. July 29, to about three o'clock a. m. July 31, being upward of thirty-six hours, and during this time she was supplied with men from the British steam-tug Hercules, which followed her from Liverpool. These thirty-six hours were allowed to elapse without any attempt to stop her. Here was another stage of "crass negligence."

Thus was there negligence in allowing the building to proceed, negligence in allowing the escape from Liverpool, and negligence in allowing the final escape from the British coast. Lord Russell, while trying to vindicate his government and repelling the complaints of the United States, more than once admitted that the escape of the Alabama was a "scandal and reproach," which to my mind is very like a confession. Language could not be stronger. Surely such an act cannot be blameless. If damages are ever awarded to a friendly power for injuries received it is difficult to see where they could be more strenuously claimed than in a case which the first minister of the offending power did not hesitate to characterize so strongly.

The enlistment of the crew was not less obnoxious to censure than the building of the ship and her escape. It was a part of the transaction. The evidence is explicit. Not to occupy too much time, I refer only to the affidavit of William Passmore, who swears that he was engaged with the express understanding that the ship was "to fight for the government of the Confederate States of America;" that he joined her at Laird's yard at Birkenhead, near Liverpool, remaining there several days; that he found about thirty old man-of-war's men on board, among whom it was "well known that she was going out as a privateer for the confederate government to fight under a commission from Mr. Jefferson Davis." In a list of the crew now before me there is a large number said to be from the "royal naval reserve." I might add to this testimony. The more the case is examined the more clearly do we discern the character of the transaction.

The dedication of the ship to the rebel service, from the very laying of the keel and the organization of her voyage, with England as her *naval base*, from which she drew munitions of war and men, made her departure as much a *hostile expedition* as if she had sailed forth from her Majesty's dock-yard. At a moment of profound peace between the United States and England, there was a hostile expedition against the United States. It was in no just sense a commercial transaction, but an act of war.

The case is not yet complete. The Alabama, whose building was in defiance of law, international and municipal, whose escape was "a scandal and reproach," and whose enlistment of her crew was a fit sequel to the rest, after being supplied with an armament and with a rebel commander, entered upon her career of piracy. Mark now a new stage of complicity. Constantly the pirate ship was within reach of British cruisers, and from time to time within the shelter of British ports. For six days unmolested she enjoyed the pleasant hospitality of Kingston, in Jamaica, obtaining freely the coal and other supplies so necessary to her vocation. But no British cruiser, no British magistrate ever arrested the offending ship, whose voyage was a continuing "scandal and reproach" to the British government.

The excuse for this strange license is a curious technicality, as if a technicality could avail in this case at any stage. Borrowing a phrase from that master of admiralty

jurisprudence, Sir William Scott, it is said that the ship "deposited" her original sin at the conclusion of her voyage, so that afterward she was blameless. But the Alabama never concluded her voyage until she sank under the guns of the Kearsarge, because she never had a port of her own. She was no better than the *Flying Dutchman*, and so long as she sailed was liable for that original sin which had impregnated every plank with an indelible dye. No British cruiser could allow her to proceed; no British port could give her shelter without renewing the complicity of England.

The Alabama case begins with a fatal concession, by which the rebels were enabled to build ships in England and then to sail them without being liable as pirates; it next shows itself in the building of the ship, in the armament, and in the escape, with so much of negligence on the part of the British government as to constitute sufferance, if not connivance; and then again the case reappears in the welcome and hospitality accorded by British cruisers and by the magistrates of British ports to the pirate ship, when her evasion from British jurisdiction was well known. Thus at three different stages the British government is compromised—first, in the concession of ocean belligerency, on which all depended; secondly, in the negligence which allowed the evasion of the ship in order to enter upon the hostile expedition for which she was built, manned, armed, and equipped; and, thirdly, in the open complicity which, after this evasion, gave her welcome hospitality and supplies in British ports. Thus her depredations and burnings, making the ocean blaze, all proceeded from England, which by three different acts lighted the torch. To England must be traced also all the widespread consequences which ensued.

I take the case of the Alabama, because it is the best known, and because the building, equipment, and escape of this ship were under circumstances most obnoxious to judgment; but it will not be forgotten that there were consort ships, built under the shelter of that fatal proclamation, issued in such an eclipse of just principles, and, like the ships it unlocked, "rigged with curses dark." One after the other ships were built; one after the other they escaped on their errand; and one after the other they enjoyed the immunities of British ports. Audacity reached its height when iron-clad rams were built, and the perversity of the British government became still more conspicuous by its long refusal to arrest these destructive engines of war destined to be employed against the United States. This protracted hesitation, where the consequences were so menacing, is a part of the case.

It is plain that the ships which were built under the safe-guard of this ill-omened proclamation; which stole forth from the British shores and afterward enjoyed the immunities of British ports, were not only British in origin, but British in equipment, British in armament, and British in crews. They were British in every respect except in their commanders, who were rebel, and one of these, as his ship was sinking, owed his safety to a British yacht, symbolizing the omnipresent support of England. British sympathies were active in their behalf. The cheers of a British passenger ship crossing the path of the Alabama encouraged the work of piracy, and the cheers of the House of Commons encouraged the builder of the Alabama, while he defended what he had done and exclaimed, in taunt to him who is now an illustrious member of the British cabinet, John Bright, that he "would rather be handed down to posterity as the builder of a dozen Alabamas" than be the author of the speeches of that gentleman "crying up" the institutions of the United States, which the builder of the Alabama, rising with his theme, denounced "as of no value whatever and as reducing the very name of liberty to an utter absurdity," while the cheers of the House of Commons, echoed back his words. Thus from beginning to end, from the fatal proclamation to the rejoicing of the accidental ship and the rejoicing of the House of Commons was this hostile expedition protected and encouraged by England. The same spirit which dictated the swift concession of belligerency, with all its deadly incidents, ruled the hour, entering into and possessing every pirate ship.

There are two circumstances by which the whole case is aggravated. One is found in the date of the proclamation, which lifted the rebels to an equality with the national government; opening to them everything that was open to us, whether ship-yard, founderies, or manufactories; and giving to them a flag on the ocean coequal with the flag of the Union. This extraordinary manifesto was issued on the day before the arrival of our minister in England, so that when, after an ocean voyage, he reached the British government to which he was accredited he found this great and terrible indignity to his country already perpetrated and the flood-gates opened to infinite woes. The minister had been announced; he was daily expected. The British government knew of his coming. But in hottest haste they did this thing.

The other aggravation is found in its flagrant, unnatural departure from that anti-slavery rule, which, by manifold declarations, legislative, political, and diplomatic, was the avowed creed of England. Often was this rule proclaimed, but, if we except the great act of emancipation, never more pointedly than in the famous circular of Lord Palmerston, while minister of foreign affairs, announcing to all nations that England was pledged to the universal abolition of slavery. And now, when slaveholders, in the very madness of barbarism, broke away from the national government and attempted

to found a new empire with slavery as its declared corner-stone, anti-slavery England, without a day's delay, without even waiting the arrival of our minister, who was known to be on his way, made haste to decree that this shameful and impossible pretension should enjoy equal rights with the national government in her ship-yards, founderies, and manufactories, and equal rights on the ocean. Such was the decree. Rebel slaveholders, occupied in a hideous attempt, were taken by the hand, and thus with the official protection and the God-speed of anti-slavery England commenced their accursed work.

I close this part of the argument by the testimony of Mr. Bright, who, in a speech at Rochdale, among his neighbors, February 3, 1863, thus exhibits the criminal complicity of England:

"I regret more than I have words to express this painful fact, that of all the countries in Europe this country is the only one which has men in it who are willing to take steps in favor of this intended slave government. We supply the ships; we supply the arms, the munitions of war; *we give aid and comfort to the foulest of crimes. Englishmen only do it.*" (Bright's Speeches, vol. I, p. 239.)

In further illustration, and in support of Mr. Bright's allegation, I refer again to the multitudinous blockade-runners from England. Without the manifesto of belligerency they could not have sailed. All this stealthy fleet, charged with hostility to the United States, was a part of the great offense. The blockade-runners were kindred to the pirate ships. They were of the same bad family, having their origin and home in England. From the beginning they went forth with their cargoes of death; for the supplies which they furnished contributed to the work of death. When, after a long and painful siege, our conquering troops entered Vicksburg, they found Armstrong guns from England in position; and so, on every field where our patriot fellow-citizens breathed a last breath, were English arms and munitions of war, all testifying against England. The dead spoke also, and the wounded still speak.

REPARATION FROM ENGLAND.

At last the rebellion succumbed. British ships and British supplies had done their work, but they failed. And now the day of reckoning has come; but with little apparent sense of what is due on the part of England. Without one soothing word for a friendly power deeply aggrieved, without a single regret for what Mr. Cobden, in the House of Commons, called "the cruel losses" inflicted upon us, or for what Mr. Bright called "aid and comfort to the foulest of crimes," or for what a generous voice from Oxford University denounced as a "flagrant and maddening wrong," England simply proposes to submit the question of liability for "individual losses" to an anomalous tribunal, where chance plays its part. This is all. Nothing is admitted even on this question; no rule for the future is established; while nothing is said of the indignity to the nation, nor of the damages to the nation. On an earlier occasion it was otherwise.

There is an unhappy incident in our relations with Great Britain which attests how in other days "individual losses" were only a minor element in reparation for a wrong received by the nation. You all know from history how in time of profound peace, and only a few miles outside the Virginia capes, the British frigate *Leopard* fired into the national frigate *Chesapeake*, pouring broadside upon broadside, killing three persons and wounding eighteen, some severely, and then boarding her carried off four others as British subjects. This was in the summer of 1807. The brilliant Mr. Canning, British minister of foreign affairs, promptly volunteered overtures for an accommodation by declaring his Majesty's readiness to take the whole of the circumstances of the case into consideration and "to make reparation for any alleged injury to the sovereignty of the United States, whenever it should be clearly shown that such injury has been actually sustained and that such reparation is really due." Here was a good beginning. There was to be reparation for an injury to the national sovereignty. After years of painful negotiation, the British minister at Washington, under date of November 1, 1811, offered to the United States three propositions: first, the disavowal of the unauthorized act; secondly, the immediate restoration, so far as circumstances would permit, of the men forcibly taken from the *Chesapeake*; and, thirdly, a suitable pecuniary provision for the sufferers in consequence of the attack on the *Chesapeake*; concluding with these words:

"These honorable propositions are made with the sincere desire that they may prove satisfactory to the government of the United States, and I trust they will meet with that amicable reception which their conciliatory nature entitles them to. I need scarcely add how cordially I join with you in the wish that they may prove introductory to a removal of all the differences depending between our two countries." (State Papers, Foreign Affairs, vol. III, p. 500.)

I adduce this historic instance to illustrate partly the different forms of reparation. Here, of course, was reparation to individuals; but there was also reparation to the nation, whose sovereignty had been outraged.

There is another instance, which is not without authority. In 1837 an armed force from Upper Canada crossed the river just above the Falls of Niagara and burned an American vessel, the *Caroline*, while moored to the shores of the United States. Mr. Webster, in his negotiation with Lord Ashburton, characterized this act as "of itself a wrong and offense to the sovereignty and the dignity of the United States, for which to this day no atonement, or even apology, has been made by her Majesty's government;" all these words being strictly applicable to the present case. Lord Ashburton, in reply, after recapitulating some mitigating circumstances and expressing a regret "that some explanation and apology for this occurrence was not immediately made," proceeds to say:

"Her Majesty's government earnestly desire that a reciprocal respect for the independent jurisdiction and authority of neighboring states may be considered among the first duties of all governments; and I have to repeat the assurance of regret they feel that the event of which I am treating should have disturbed the harmony they so anxiously wish to maintain with the American people and government." (Webster's Works, vol. VI, p. 300.)

Here again was reparation for a wrong done to the nation.

Looking at what is due to us on the present occasion, we are brought again to the conclusion that the satisfaction of individuals whose ships have been burned or sunk is only a small part of what we may justly expect. As in the earlier cases where the national sovereignty was insulted, there should be an acknowledgment of wrong, or at least of liability, leaving to the commissioners the assessment of damages only. The blow inflicted by that fatal proclamation, which insulted our national sovereignty and struck at our unity as a nation, followed by broadside upon broadside, driving our commerce from the ocean, was kindred in character to those earlier blows, and, when we consider that it was in aid of slavery, it was a blow at civilization itself. Besides degrading us and ruining our commerce, its direct and constant influence was to encourage the rebellion, and to prolong the war waged by slaveholders at such cost of treasure and blood. It was a terrible mistake, which I cannot doubt that good Englishmen must regret. And now, in the interest of peace, it is the duty of both sides to find a remedy, complete, just, and conciliatory, so that the deep sense of wrong and the detriment to the republic may be forgotten in that proper satisfaction which a nation loving justice cannot hesitate to offer.

THE EXTENT OF OUR LOSSES.

Individual losses may be estimated with reasonable accuracy. Ships burned or sunk with their cargoes may be counted and their value determined; but this leaves without recognition the vaster damage to commerce driven from the ocean, and that other damage, immense and infinite, caused by the prolongation of the war, all of which may be called *national* in contradistinction to *individual*.

Our *national losses* have been frankly conceded by eminent Englishmen. I have already quoted Mr. Cobden, who did not hesitate to call them "cruel losses." During the same debate in which he let drop this testimony, he used other words, which show how justly he comprehended the case. "*You have been,*" said he, "*carrying on war from these shores with the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about \$15,000,000, or nearly £3,000,000 sterling. But this is a small part of the injury which has been inflicted on the American marine. We have rendered the rest of her vast mercantile property useless.*" Thus, by the testimony of Mr. Cobden, were those individual losses, which are alone recognized by the pending treaty, only "a small part of the injury inflicted." After confessing his fears with regard to "the heaping up of a *gigantic material grievance* such as was then rearing," he adds, in memorable words:

"You have already done your worst toward the American mercantile marine. What with the high rate of insurance, what with these captures, and what with the amount of damage you have done to that which is left, you have virtually made valueless that vast property. Why, if you had gone and helped the confederates by bombarding all the accessible sea-port towns of America a few lives might have been lost which, as it is, have not been sacrificed, but you could hardly have done more injury in the way of destroying property than you have done by these few cruisers." [Hear, hear.]

With that clearness of vision which he possessed in such rare degree, this statesman saw that England had "virtually made valueless a vast property," as much as if this power had bombarded "all the accessible sea-port towns of America."

So strong and complete is this statement that any further citation seems superfluous; but I cannot forbear adducing a pointed remark in the same debate, by that able gentleman, Mr. William E. Forster: "There could not," said he, "be a stronger illustration of the damage which has been done to the American trade by these cruisers than the fact that so completely was the American flag driven from the ocean that the *Georgia*, on her second cruise, did not meet a single American vessel in six weeks, though she

saw no less than seventy vessels in a very few days." This is most suggestive. So entirely was our commerce driven from the ocean that for six weeks not an American vessel was seen.

Another Englishman, in an elaborate pamphlet, bears similar testimony. I refer to the pamphlet of Mr. Edge, published in London by Ridgway in 1864, and entitled "The Destruction of the American Carrying Trade." After setting forth at length the destruction of our commerce by British pirates, this writer thus foreshadows the damages: "Were we," says he, "the sufferers, we should certainly demand compensation for the loss of the property captured or destroyed; for the interest of the capital invested in the vessels and their cargoes, and may be a fair compensation in addition for all and any injury accruing to our business interests from the depredations upon our shipping. *The remuneration may reach a high figure in the present case; but it would be a simple act of justice, and might prevent an incomparably greater loss in the future.*" Here we have the damages as assessed by an Englishman, who, while contemplating remuneration at a high figure, recognizes it as a simple act of justice.

Such is the candid and explicit testimony of Englishmen, pointing the way to the proper rule of damages. How to authenticate the extent of national loss with reasonable certainty is not without difficulty; but it cannot be doubted that such a loss occurred. It is folly to question it. The loss may be seen in various circumstances, as in the rise of insurance on all American vessels; the fate of the carrying trade, which was one of the great resources of our country; the diminution of our tonnage with the corresponding increase of British tonnage; the falling off in our exports and imports, with due allowance for our abnormal currency and the diversion of war. These are some of the elements; and here again we have British testimony. Mr. W. E. Forster, in the speech already quoted, announces that "the carrying trade of the United States was transferred to British merchants;" and Mr. Cobden, with his characteristic mastery of details, shows that, according to an official document laid on the table of Parliament, American shipping had been transferred to English capitalists as follows: in 1858, 33 vessels, 13,638 tons; 1859, 49 vessels, 21,673 tons; 1860, 41 vessels, 13,638 tons; 1861, 126 vessels, 71,673 tons; 1862, 135 vessels, 64,573 tons; and 1863, 348 vessels, 252,579 tons; and he adds, "I am told that this operation is now going on as fast as ever;" and this circumstance he declares to be "the *gravest part* of the question of our relations with America." But this "gravest part" is left untouched by the pending treaty.

Our own official documents are in harmony with these English authorities. For instance, I have before me now the report of the Secretary of the Treasury for 1868, with an appendix by Mr. Nimmo on ship-building in our country. From this report it appears that in the New England States during the year 1855, the most prosperous year of American ship-building, 305 ships and barks and 173 schooners were built, with an aggregate tonnage of 326,429 tons, while during the last year only 58 ships and barks and 213 schooners were built, with an aggregate tonnage of 98,697 tons. I add a further statement from the same report:

"During the ten years from 1852 to 1862 the aggregate tonnage of American vessels entered at sea-ports of the United States from foreign countries was 30,225,475 tons, and the aggregate tonnage of foreign vessels entered was 14,699,192 tons, while during the five years from 1863 to 1868 the aggregate tonnage of American vessels entered was 9,299,877 tons, and the aggregate tonnage of foreign vessels entered was 14,116,427 tons, showing that American tonnage in our foreign trade had fallen from two hundred and six to sixty-six per cent. of foreign tonnage in the same trade. Stated in other terms, during the decade from 1852 to 1862 sixty-seven per cent. of the total tonnage entered from foreign countries was in American vessels; and during the five years from 1863 to 1868 only thirty-nine per cent. of the aggregate tonnage entered from foreign countries was in American vessels, a relative falling off of nearly one-half." (Finance Report for 1868, page 496.)

It is not easy to say how much of this change, which has become chronic, may be referred to British pirates; but it cannot be doubted that they contributed largely to produce it. They began the influences under which this change has continued.

There is another document which bears directly upon the present question. I refer to the interesting report of Mr. Morse, our consul at London, made during the last year, and published by the Secretary of State. After a minute inquiry the report shows that, on the breaking out of the rebellion in 1861, the entire tonnage of the United States, coasting and registered, was 5,539,813 tons, of which 2,642,625 tons were registered and employed in foreign trade, and that, at the close of the rebellion in 1865, notwithstanding an increase in coasting tonnage, our registered tonnage had fallen to 1,602,528 tons, being a loss during the four years of more than a million tons, amounting to about forty per cent. of our foreign commerce. During the same four years the total tonnage of the British empire rose from 5,895,369 tons to 7,322,604 tons, the increase being especially in the foreign trade. The report proceeds to say that as to the cause of the decrease in America and the corresponding increase in the British empire "there can be no room for question or doubt." Here is the precise testimony

from one, who, at his official post in London, watched this unprecedented drama, with the outstretched ocean as a theater, and British pirates as the performers :

"Conceding to the rebels the belligerent rights of the sea when they had not a solitary war ship afloat, in dock, or in the process of construction, and when they had no power to protect or dispose of prizes, made their sea-rovers, when they appeared, the instruments of terror and destruction to our commerce. From the appearance of the first corsair in pursuit of their ships American merchants had to pay not only the marine but the war risk also on their ships. After the burning of one or two ships with their neutral cargoes, the ship-owner had to pay the war risk on the cargo his ship had on freight as well as on the ship. Even then, for safety, the preference was, as a matter of course, always given to neutral vessels; and American ships could rarely find employment on these hard terms as long as there were good neutral ships in the freight markets. Under such circumstances there was no course left for our merchant ship-owners but to take such profitless business as was occasionally offered them, let their ships be idle at their moorings, or in dock with large expense and deterioration constantly going on, to sell them outright when they could do so without ruinous sacrifice, or put them under foreign flags for protection." (Report of F. H. Morse, United States Consul at London, dated January 1, 1868.)

Beyond the actual loss in the national tonnage there was a further loss in the arrest of our natural increase in this branch of industry, which an intelligent statistician puts at five per cent. annually, making in 1866 a total loss on this account of 1,384,958 tons, which must be added to 1,229,036 tons actually lost. The same statistician, after estimating the value of a ton at forty dollars gold, and making allowance for old and new ships, puts the sum total of national loss on this account at \$110,000,000. Of course this is only an item in our bill.

To these authorities I add that of the National Board of Trade, which, in a recent report on American shipping, after setting forth the diminution of our sailing tonnage, says that it is all to be traced to the war on the ocean, and the result is summed up in the words, that "while the tonnage of the nation was rapidly disappearing by the *raages of the rebel cruisers* and by sales abroad, there was no construction of new vessels going forward to counteract the decline even in part." Such is the various testimony, all tending to one conclusion.

This is what I have to say for the present on *national losses* through the destruction of commerce. These are large enough; but there is another chapter where they are larger far. I refer, of course, to the national losses caused by the prolongation of the war, and traceable directly to England. Pardon me if I confess the regret with which I touch this prodigious item, for I know well the depth of feeling which it is calculated to stir. But I cannot hesitate. It belongs to the case. No candid person, who studies this eventual period, can doubt that the rebellion was originally encouraged by hope of support from England; that it was strengthened at once by the concession of belligerent rights on the ocean; that it was fed to the end by British supplies; that it was encouraged by every well-stored British ship that was able to defy our blockade; that it was quickened into frantic life with every report from the British pirates, flaming anew with every burning ship; nor can it be doubted that, without British intervention, the rebellion would have soon succumbed under the well-directed efforts of the national government. Not weeks or months but years were added in this way to our war, so full of the most costly sacrifice. The subsidies which, in other times, England contributed to continental wars were less effective than the aid and comfort which she contributed to the rebellion. It cannot be said too often that the *naval base* of the rebellion was not in America but in England. The blockade-runners and the pirate ships were all English. England was the fruitful parent, and these were the "hell-hounds," pictured by Milton in his description of sin, which, "when they list, would creep into her womb and kennel there." Mr. Cobden boldly said in the House of Commons that England made war from her shores on the United States, "with an amount of damage to that country greater than in many ordinary wars." According to this testimony, the conduct of England was war; but it must not be forgotten that this war was carried on at our sole cost. The United States paid for a war waged by England upon the national unity.

There is one form that this war assumed which was incessant, most vexatious, and costly, besides being in itself a positive alliance with the rebellion. It was that of blockade-runners, openly equipped and supplied by England under the shelter of that hateful proclamation. Constantly leaving English ports, they stole across the ocean, and then broke the blockade. These active agents of the rebellion could be counteracted only by a network of vessels stretching along the coast, at great cost to the country. Here is another distinct item, the amount of which may be determined at the Navy Department.

The sacrifice of precious life is beyond human compensation; but there may be an approximate estimate of the national loss in treasure. Everybody can make the calculation. I content myself with calling attention to the elements which enter into it. Besides the blockade there was the prolongation of the war. The rebellion was

suppressed at a cost of more than four thousand million dollars, a considerable portion of which has been already paid, leaving twenty-five hundred millions as a national debt to burden the people. If, through British intervention, the war was doubled in duration, or in any way extended, as cannot be doubted, then is England justly responsible for the additional expenditure to which our country was doomed; and, whatever may be the final settlement of these great accounts, such must be the judgment in any chancery which consults the simple equity of the case.

This plain statement, without one word of exaggeration or aggravation, is enough to exhibit the magnitude of the national losses, whether from the destruction of our commerce, the prolongation of the war, or the expense of the blockade. They stand before us mountain high, with a base broad as the nation, and a mass stupendous as the rebellion itself. It will be for a wise statesmanship to determine how this fearful accumulation, like Pelion upon Ossa, shall be removed out of sight, so that it shall no longer overshadow the two countries.

THE RULE OF DAMAGES.

Perhaps I ought to anticipate an objection from the other side to the effect that these national losses, whether from the destruction of our commerce, the prolongation of the war, or the expense of the blockade, are indirect and remote, so as not to be a just cause of claim. This is expressed at the common law by the rule that "damages must be for the natural and proximate consequence of an act." (2 Greenleaf, Ev., p. 210.) To this excuse the answer is explicit. The damages suffered by the United States are two-fold, individual and national, being in each case direct and proximate, although in the one case individuals suffered, and in the other case the nation. It is easy to see that there may be occasions where, overtopping all individual damages, are damages suffered by the nation, so that reparation to individuals would be insufficient; nor can the claim of the nation be questioned simply because it is large, or because the evidence with regard to it is different from that in the case of an individual. In each case the damage must be proved by the best possible evidence, and this is all that law or reason can require. In the case of the nation the evidence is historic; and this is enough. Impartial history will record the national losses from British intervention, and it is only reasonable that the evidence of these losses should not be excluded from judgment. Because the case is without precedent, because no nation ever before received such injury from a friendly power, this can be no reason why the question should not be considered on the evidence.

Even the rule of the common law furnishes no impediment; for our damages are the natural consequence of what was done. But the rule of the Roman law, which is the rule of international law, is broader than that of the common law. The measure of damages, according to the Digest, is, "whatever may have been lost or might have been gained;" *quantum mihi abest, quantumque lucrari potui*; and this same rule seems to prevail in the French law, borrowed from the Roman law. This rule opens the door to ample reparation for all damages, whether individual or national.

There is another rule of the common law, in harmony with strict justice, which is applicable to the case. I find it in the law relating to *nuisances*, which provides that there may be two distinct proceedings—first, in behalf of individuals; and, secondly, in behalf of the community. Obviously, reparation to individuals does not supersede reparation to the community. The proceeding in the one case is by action at law, and in the other by indictment. The reason assigned by Blackstone for the latter is, "because the damages being common to all the king's subjects, no one can assign his particular proportion of it." (3 Black. Com., p. 219.) But this is the very case with regard to damages sustained by the nation.

A familiar authority furnishes an additional illustration, which is precisely in point:

"No person, natural or corporate, can have an action for a *public nuisance*, or punish it; but only the king in his public capacity of supreme governor and *pater familias* of the kingdom. Yet this rule admits of one exception—where a private person suffers some extraordinary damage beyond the rest of the king's subjects." (Tomlin's Law Dict., art. Nuisance.)

Applying this rule to the present case, the way is clear. Every British pirate was a *public nuisance*, involving the British government, which must respond in damages, not only to the individuals who have suffered, but also to the national government, acting as *pater familias* for the common good of all the people.

Thus by an analogy of the common law, in the case of a public nuisance, also by the strict rule of the Roman law, which enters so largely into international law, and even by the rule of the common law relating to damages, all losses, whether individual or national, are the just subject of claim. It is not I who say this; it is the law. The colossal sum-total may be seen not only in the losses of individuals, but in those national losses, caused by the destruction of our commerce, the prolongation of the

war, and the expense of the blockade, all of which may be charged directly to England;

— illud ab uno
Corpore, et ex una pendebat origine bellum.

Three times is this liability fixed—first by the concession of ocean belligerency, opening to the rebels ship-yards, founderies and manufactories, giving to them a flag on the ocean; secondly, by the organization of hostile expeditions, which, by admissions in Parliament, were nothing less than piratical war on the United States with England as the naval base; and, thirdly, by welcome, hospitality, and supplies extended to these pirate ships in ports of the British empire. Show either of these, and the liability of England is complete. Show the three, and this power is bound by a triple cord.

CONCLUSION.

Mr. President, in concluding these remarks, I desire to say that I am no volunteer. For several years I have carefully avoided saying anything on this most irritating question, being anxious that negotiations should be left undisturbed to secure a settlement which could be accepted by a deeply-injured nation. The submission of the pending treaty to the judgment of the Senate left me no alternative. It became my duty to consider it carefully in committee, and to review the whole subject. If I failed to find what we had a right to expect, and if the just claims of our country assumed unexpected proportions, it was not because I would bear hard on England, but because I wish most sincerely to remove all possibility of strife between our two countries, and it is evident that this can be done only by first ascertaining the nature and extent of difference. In this spirit I have spoken to-day. If the case against England is strong, and if our claims are unprecedented in magnitude, it is only because the conduct of this power at a trying period was most unfriendly, and the injurious consequences of this conduct were on a scale corresponding to the theater of action. Life and property were both swallowed up, leaving behind a deep-seated sense of enormous wrong, as yet unatoned and even unacknowledged, which is one of the chief factors in the problem now presented to the statesmen of both countries. The attempt to close this great international debate without a complete settlement is little short of puerile.

With the lapse of time and with minuter consideration the case against England becomes more grave, not only from the questions of international responsibility which it involves, but from better comprehension of the damages which are seen now in their true proportions. During the war and for some time thereafter it was impossible to state them. The mass of a mountain cannot be measured at its base. The observer must occupy a certain distance, and this rule perspective is justly applicable to damages which are vast beyond precedent.

A few dates will show the progress of the controversy and how the case enlarged. Going as far back as 20th November, 1862, we find our minister in London, Mr. Adams, calling for redress from the British government on account of the Alabama. This was the mild beginning. On the 23d of October, 1863, in another communication, the same minister suggested to the British government "any fair and equitable form of arbitrament or reference." This proposition slumbered in the British Foreign Office for nearly two years, during which the Alabama was pursuing her piratical career, when on 30th August, 1865, it was awakened by Lord Russell only to be knocked down in these words:

"In your letter of October 23, 1863, you were pleased to say that the government of the United States is ready to agree to any form of arbitration."

"Her Majesty's government must, therefore, decline either to make reparation and compensation for the captures made by the Alabama, or to refer the question to any foreign state."

Such was our repulse from England, having at least the merit of frankness, if nothing else. On the 17th October, 1865, our minister informed Lord Russell that the United States had finally resolved to make no effort for arbitration. Again the whole question slumbered until 27th August, 1866, when Mr. Seward presented a list of individual claims on account of the pirate Alabama. From that time negotiation has continued with ups and downs, until at last the pending treaty was signed. Had the early overtures of our government been promptly accepted, or had there been at any time a just recognition of the wrong done, I doubt not that this great question would have been settled; but the rejection of our very moderate propositions and the protracted delay, which afforded an opportunity to review the case in its different bearings, have awakened the people to the magnitude of the interests involved. If our demands are larger now than at our first call, it is not the only time in history where such a rise has occurred. The story of the Sibyl is repeated, and England is the Roman King.

Shall these claims be liquidated and canceled promptly, or allowed to slumber until

called into activity by some future exigency? There are many among us who, taking counsel of a sense of national wrong, would leave them to rest without settlement, so as to furnish a precedent for retaliation in kind, should England find herself at war. There are many in England who, taking counsel of a perverse political bigotry, have spurned them absolutely; and there are others who, invoking the point of honor, assert that England cannot entertain them without compromising her honor. Thus there is peril from both sides. It is not difficult to imagine one of our countrymen saying with Shakspeare's Jew, "The villainy you teach me I will execute, and it shall go hard, but I will better the instruction;" nor is it difficult to imagine an Englishman firm in his conceit, that no apology can be made and nothing paid. I cannot sympathize with either side. Be the claims more or less, they are honestly presented, with the conviction that they are just, and they should be considered candidly, so that they shall no longer lower like a cloud ready to burst upon two nations, which, according to their inclinations, can do each other such infinite injury or such infinite good. I know it is sometimes said that war between us must come sooner or later. I do not believe it. But if it must come, let it be later, and then I am sure it will never come. Meanwhile, good men must unite to make it impossible.

Again I say this debate is not of my seeking. It is not tempting, for it compels criticism of a foreign power with which I would have more than peace, more even than concord. But it cannot be avoided. The truth must be told, not in anger, but in sadness. England has done to the United States an injury most difficult to measure. Considering when it was done and in what complicity, it is truly unaccountable. At a great epoch of history, not less momentous than that of the French Revolution or that of the Reformation, when civilization was fighting a last battle with slavery, England gave her name, her influence, her material resources to the wicked cause, and flung a sword into the scale with slavery. Here was a portentous mistake. Strange that the land of Wilberforce, after spending millions for emancipation, after proclaiming everywhere the truths of liberty, and ascending to glorious primacy in the sublime movement for the universal abolition of slavery, could do this thing! Like every departure from the rule of justice and good neighborhood, her conduct was pernicious in proportion to the scale of operations, affecting individuals, corporations, communities, and the nation itself. And yet down to this day there is no acknowledgment of this wrong; not a single word. Such a generous expression would be the beginning of a just settlement, and the best assurance of that harmony between two great and kindred nations which all must desire.

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